

By Mr. HOEVEN:

H. Con. Res. 25. Concurrent resolution to declare the date of termination of the wars in which the United States has been engaged since December 7, 1941; to the Committee on the Judiciary.

By Mr. BYRNES of Wisconsin:

H. Res. 119. Resolution to authorize the Committee on Expenditures in the Executive Departments to investigate and study Federal aid to States and Territories; to the Committee on Rules.

By Mrs. ROGERS of Massachusetts:

H. Res. 120. Resolution to direct the Committee on Veterans' Affairs to inspect the Veterans' Administration; to the Committee on Rules.

#### MEMORIALS

Under clause 3 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of South Carolina, memorializing the President and the Congress of the United States to make such appropriations and take such other steps as may be necessary in order to discover and effect a cure for the dread disease of cancer; to the Committee on Interstate and Foreign Commerce.

Also, memorial of the Legislature of the State of South Carolina, memorializing the President and the Congress of the United States to take whatever steps necessary to make a greater amount of sugar available to the American people; to the Committee on Banking and Currency.

#### PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ANDERSON of California:

H. R. 2246. A bill for the relief of Carl E. Lawson and Fireman's Fund Indemnity Co.; to the Committee on the Judiciary.

By Mr. ANDREWS of New York:

H. R. 2247. A bill to authorize the President to appoint Maj. Gen. Laurence S. Kuter as representative of the United States to the Interim Council of the Provisional International Civil Aviation Organization or its successor, without affecting his military status and perquisites; to the Committee on Armed Services.

H. R. 2248. A bill to authorize the Secretary of War to grant an easement and to convey to the Louisiana Power & Light Co. a tract of land comprising a portion of Camp Livingston in the State of Louisiana; to the Committee on Armed Services.

By Mr. BLOOM:

H. R. 2249. A bill for the relief of Ghetel Pollak Kahan, Mrs. Magdalena Kahan, and Susanna Kahan; to the Committee on the Judiciary.

H. R. 2250. A bill for the relief of Mrs. Daisy A. T. Jaegers; to the Committee on the Judiciary.

H. R. 2251. A bill for the relief of Hermenegild Sanz; to the Committee on the Judiciary.

H. R. 2252. A bill for the relief of Erich Juhn; to the Committee on the Judiciary.

H. R. 2253. A bill for the relief of Bahram Suzenijian; to the Committee on the Judiciary.

H. R. 2254. A bill for the relief of Mrs. Johanna Thal-Birsén; to the Committee on the Judiciary.

By Mr. D'EWART:

H. R. 2255. A bill to authorize the Secretary of the Interior to sell certain lands in the State of Montana to Everett H. Hanson; to the Committee on Public Lands.

By Mr. DINGELL:

H. R. 2256. A bill for the relief of Vincenzo Leone; to the Committee on the Judiciary.

By Mr. HOBBS:

H. R. 2257. A bill for the relief of South-eastern Sand & Gravel Co.; to the Committee on the Judiciary.

By Mr. HORAN:

H. R. 2258. A bill for the relief of Martha A. Donaldson; to the Committee on the Judiciary.

By Mr. HULL:

H. R. 2259. A bill for the relief of the Willow River Power Co.; to the Committee on the Judiciary.

By Mr. KEATING:

H. R. 2260. A bill to authorize the cancellation of deportation proceedings in the case of George Namy; to the Committee on the Judiciary.

H. R. 2261. A bill to authorize the cancellation of deportation proceedings in the case of Antonios Apostolis Malles; to the Committee on the Judiciary.

By Mr. LARCADE:

H. R. 2262. A bill for the relief of Noah Labby, Erwin Heirs, Inc., Joseph Natali, and J. E. Fournier; to the Committee on the Judiciary.

By Mr. LESINSKI:

H. R. 2263. A bill for the relief of Joseph Barabas; to the Committee on the Judiciary.

By Mr. ROGERS of Florida:

H. R. 2264. A bill for the relief of Frank E. Blanchard; to the Committee on the Judiciary.

By Mr. SMATHERS:

H. R. 2265. A bill for the relief of Lloyd L. Warfield; to the Committee on the Judiciary.

By Mr. WILLIAMS:

H. R. 2266. A bill for the relief of Axel A. Stromberg; to the Committee on the Judiciary.

H. R. 2267. A bill for the relief of Mrs. Russell C. Allen and Molly Ann Allen; to the Committee on the Judiciary.

H. R. 2268. A bill for the relief of Charles E. Crook; to the Committee on the Judiciary.

By Mr. YOUNGBLOOD:

H. R. 2269. A bill for the relief of Frank A. Constable; to the Committee on the Judiciary.

#### PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

139. By Mr. CASE of South Dakota: Memorial of the Thirtieth Session of the Legislature of the State of South Dakota, House Concurrent Resolution No. 4, memorializing the Congress of the United States of America to reclaim and keep in full force and effect all Federal taxes, license fees, and regulatory measures now existing, relating to the manufacture, distribution, and sale of margarine or butter substitutes; to the Committee on Ways and Means.

140. Also, memorial of the Thirtieth Session of the Legislature of the State of South Dakota, House Concurrent Resolution No. 3, memorializing the Congress of the United States of America to discontinue the Federal gasoline tax and Federal lubricating-oil tax as soon as possible and refuse to reenact such taxes; to the Committee on Ways and Means.

141. By Mr. MUNDT: Memorial of the Thirtieth Session of the Legislature of the State of South Dakota, memorializing the Congress of the United States of America to appropriate the necessary funds to carry on the construction of Fort Randall and Angostura Reservoirs and to initiate construction of the Oahe Reservoir as proposed by the Corps of Engineers and to initiate construction of the Shadehill Reservoir as proposed by the Bureau of Reclamation; to the Committee on Appropriations.

142. Also, memorial of the Thirtieth Session of the Legislature of the State of South Dakota, memorializing the Congress of the United States of America to grant full rights

of citizenship to American Indians who served in the armed forces of the United States of America in time of war; to the Committee on Armed Services.

143. By Mr. LYNCH: Petition of National Department, Catholic War Veterans, New York City, urging admission to the United States of 300,000 displaced persons; to the Committee on Foreign Affairs.

144. By Mr. SMITH of Wisconsin: Resolution adopted by the Lithuanian fraternal and cultural organizations which constitute the Racine, Wis., chapter of the Lithuanian-American Council, at their mass meeting held at St. Casimir's Church hall, February 16, 1947; to the Committee on Foreign Affairs.

## HOUSE OF REPRESENTATIVES

THURSDAY, FEBRUARY 27, 1947

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Blessed Lord, at this moment of supplication, we pray that Thou mayest be the food for our thoughts and the wisdom for our understanding, and that in Thee we may find rest of mind and soul. O hold before us the object of our quest, that our endeavors may bear the sense of dignity and humble toil.

As we are confronted with hard duties in our high calling, give us the courage to be kind rather than resentful; to be merciful rather than arrogant; and, above all virtues, crown us with the spirit of self-sacrifice rather than self-assertion. As shadows are still hovering over our world, constrain us to unburden ourselves of all unreality and find heart's ease in being true to the living precepts of our Lord. Without pretense, may we live in that upper realm of freedom and sincerity, with reverence for God, for home, and for native land. Through Christ our Saviour. Amen.

The Journal of the proceedings of yesterday was read and approved.

#### PERMISSION TO ADDRESS THE HOUSE

Mr. PHILBIN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and to include therein a copy of a resolution.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

[Mr. PHILBIN addressed the House. His remarks appear in the Appendix.]

#### THE COMMITTEE ON UN-AMERICAN ACTIVITIES

Mr. THOMAS of New Jersey. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. THOMAS of New Jersey. Mr. Speaker, there has been some criticism leveled at the Committee on Un-American Activities in the past along the lines of our not having introduced legislation. Much of that criticism has been unjustified.

I wish to announce to the membership today, however, that the Committee on Un-American Activities has in preparation some 15 different bills which will be introduced in the near future. Two of these bills will be introduced today. All 15 are aimed at the elimination of un-American activities in the United States. If this Congress should approve all or a majority of these bills, un-American activities would be to all practical purposes eliminated.

The first of these bills to be introduced is one to combat un-American activities by providing for forfeiture of the office or position of any Government employee whose loyalty to the United States is found to be in doubt.

Mr. McDOWELL. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. McDOWELL. Mr. Speaker, by direction of the Committee on Un-American Activities, I am introducing a resolution today which will raise the crime of contempt of the Congress from a misdemeanor to a felony. The top level of punishment would be established at a fine of \$5,000 and 5 years in jail.

The committee unanimously feels the last two persons who were found in contempt of the United States Congress chose to accept the punishment that was given for contempt of this House under the existing laws. I am sure the House will welcome this and will probably unanimously support it.

The SPEAKER. The time of the gentleman from Pennsylvania has expired.

#### PERMISSION TO ADDRESS THE HOUSE

Mr. STEFAN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

[Mr. STEFAN addressed the House. His remarks appear in the Appendix.]

#### THE WASHINGTON POST

Mr. RANKIN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. RANKIN. Mr. Speaker, I am getting tired of being maligned, lied about, and abused by the Washington Post, a Jewish newspaper published in Washington, which is doing the Jews of this country more harm, the Negroes of Washington more injury, and the white people of the District of Columbia more damage than any other paper I know.

Mr. Speaker, in addition to publishing all the lies that Drew Pearson spreads about me over the radio, the Post came out editorially on yesterday and attacked me and the majority of the members of the Committee on World War Veterans' Legislation, and the real veterans' organizations, particularly singling out the

Veterans of Foreign Wars, because of a resolution our committee adopted to stand by the policies that the members of the Veterans' Committee have stood by for the last 22 years.

I ask you to turn to the RECORD of February 24 and read my speech on page 1365, answering the attacks on the Committee on Veterans' Affairs. This outfit that the Post is complaining about has joined the Communists in picketing even the homes of Members of Congress.

The editorial goes on to say that this organization stuck its nose into BILBO's election contest in Mississippi.

Not only that, but I may say, Mr. Speaker, there is a Member of this House, the gentleman from Michigan [Mr. DONDERO], whose home was picketed by this same outfit. I am told they also joined the Communists in picketing Senator BILBO's home here in Washington. They were after the gentleman from Michigan [Mr. DONDERO] because he would not vote to extend the OPA.

If the Post wants to continue its campaign against me, I say:

    Lay on, Macduff,  
And damn'd be him that first cries, "Hold,  
    enough!"

I am ready for them.

#### EXTENSION OF REMARKS

Mr. ARNOLD asked and was given permission to extend his remarks in the Appendix of the RECORD and include an editorial appearing in the Wall Street Journal of February 25.

#### PERMISSION TO ADDRESS THE HOUSE

Mr. BAKEWELL. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

[Mr. BAKEWELL addressed the House. His remarks appear in the Appendix.]

Mr. SMITH of Wisconsin. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

[Mr. SMITH of Wisconsin addressed the House. His remarks appear in the Appendix.]

#### COMMITTEE ON FOREIGN AFFAIRS

Mr. HALLECK. Mr. Speaker, I ask unanimous consent that tomorrow the Committee on Foreign Affairs may sit during the session of the House.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

#### EXTENSION OF REMARKS

Mr. WEICHEL (at the request of Mr. HALLECK) was given permission to extend his remarks in the RECORD.

Mr. BUFFETT asked and was given permission to extend his remarks in the RECORD and include an editorial by Dorothy Thompson.

Mr. CHADWICK asked and was given permission to extend his remarks in the

RECORD and include a speech recently made at a meeting in his county.

#### "HELLO, SUCKERS"

Mr. MUNDT. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and include a memorial adopted by the South Dakota Legislature.

The SPEAKER. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

Mr. MUNDT. Mr. Speaker, back in the fantastic twenties, before the debacle of 1929, a young lady in the night-club circles of New York by name of Texas Guinan made a great reputation for herself by addressing the customers as "Hello, suckers," when they came into the night club. In 1947 on every income-tax payment date the people of 9 community-property States of the Union might well say, "Hello, suckers," to the other 39 States of the Union because the people of these 9 favored States get by with paying a fractional percent of the tax that the rest of the country has to pay. I hope that the Committee on Ways and Means of the House under Republican leadership for the first time in 16 years corrects this iniquity.

This is a perfectly idiotic injustice that the people living in the same commonwealth of States, with the same incomes, and the same tax levies, and the same exemptions, should permit the people of 39 States to pay approximately twice as much tax per individual as the people living in those 9 favored States of California, Washington, Idaho, New Mexico, Arizona, Nevada, Oklahoma, Louisiana, and Texas. I think that situation should be corrected by the current Congress. With these remarks I now call attention to Senate Concurrent Resolution No. 4 passed on this subject by the South Dakota Legislature a few days ago:

Senate Concurrent Resolution 4  
Concurrent resolution memorializing the Congress of the United States of America to give like privileges to income-tax payers resident in non-community-property States as are being enjoyed by residents of community-property States

Whereas an inequality exists between citizens and residents of the several States of the United States, in that residents of 9 States having community-property laws are privileged to divide incomes between husband and wife for income-tax purposes, thereby reducing the income taxes required to be paid by said residents, which privilege is being denied to the residents of 41 States not having community-property laws; and

Whereas, by reason of the premises, legal privileges are enjoyed by a minority of the citizens of the United States of America, solely determined by residence, which are not permitted to all the citizens of the United States; and

Whereas it is within the power of the Congress of the United States of America to correct such inequality by adopting suitable and appropriate legislation therefor: Now, therefore, be it

Resolved, That the Legislature of the State of South Dakota, in its thirtieth regular session assembled, respectfully memorialize the Congress of the United States of America that suitable and appropriate legislation be



enacted permitting division of income between husband and wife for income-tax purposes by the citizens and residents of all of the States of the United States; be it further

*Resolved*, That a copy of this resolution be dispatched to United States Senators CHAN GURNEY and HARLAN J. BUSHFIELD, to Congressmen FRANCIS CASE and KARL E. MUNDT, and to United States Senator EUGENE D. MILLIKIN and to Congressman HAROLD KNUTSON.

SIoux K. GRIGSBY,  
*President of the Senate.*

Attest:  
NIELS P. JENSEN,  
*Secretary of the Senate.*  
G. W. MILLS,  
*Speaker of the House.*

Attest:  
W. J. MATSON,  
*Clerk of the House.*

HENRY WADSWORTH LONGFELLOW

Mr. HALE. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Maine?

There was no objection.

Mr. HALE. Mr. Speaker, I take this occasion to say a few words in commemoration of the one hundred and fortieth anniversary of the birth in 1807 of a man who was born in Portland, Maine, which I have the honor to represent, who loved it and praised it in many of his works. As earlier this month we have observed the birthdays of Abraham Lincoln, Thomas A. Edison, and George Washington, it seems fitting to give this moment of deference to a man who was neither a general nor a statesman, nor an inventor, but who loved and served his fellow man and preached in a moving way the dignity and worth of men. I refer to the poet, Henry Wadsworth Longfellow.

More than most poets Longfellow has suffered from being best known by some of his worst poems. But he wrote works of insight and dignity. He wrote most memorably of elementary things, the sea and ships, the Indians, the daily occupations of men on this continent. Many of his tales and ballads like that of Paul Revere are still at our tongues' end. He was a fine scholar and student of the romance languages, a famous teacher in Bowdoin College in Maine, and in Harvard College, and an interpreter of the humanistic to generations of young men. He pondered the same problems of war and human welfare that so tragically occupy us today. And though he may not have changed the current of human history, his will always be one of the most familiar and best loved names in the history of American letters in the nineteenth century, when this country was beginning to assert itself in literary expression.

#### THE PACIFIC ISLANDS AND THE GEARHART RESOLUTION

Mr. GEARHART. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GEARHART. Mr. Speaker, the day before yesterday the American people were electrified and very agreeably surprised, gratified is, perhaps, a better word, to learn from what appeared in the public prints that Russia had gladly conceded the right of America to retain the Pacific islands.

Today we find that that generous concession by the Russians was typically in line with their policy toward the United States; in other words, their consent to our retention of the islands that our boys died to win is upon conditions.

From this morning's paper, I ascertained what those conditions are. The Times-Herald tells us:

One of the conditions would authorize the Security Council to order changes in the trusteeship agreement giving the United States control of the islands.

The plain implication of this is that Russia can keep us in hot water from now on, creating and fomenting trouble for us in the United Nations forever and anon. If this concession, or, rather, condition, is acceded to by the United States, it will mean that we will be constantly called upon to resist proposal upon proposal to in one way or another modify and change the status of these Pacific islands. This would be intolerable.

To read further from the Times-Herald:

Another [condition] would pledge the United States to let the 48,000 natives on the islands work toward independence as well as toward self-government.

So the Russians speak piously of independence for the uncomplaining peoples of the mid-Pacific. Could they possibly have been thinking of the Poles, the Lithuanians, the Latvians, the Estonians, or, perhaps, of the Manchurians or Koreans when they concocted that? Or were they dreaming of the world revolution, of the part these backward peoples might be made to play in the blood drama which so many believe is a part of their master plan? But whatever their motive in suggesting it, it bodes no good for these United States.

And, as the Times-Herald recites, the U. S. S. R.'s deep solicitude for the United States is reflected in this final condition which the Soviets would impose upon us:

The final Soviet proposal would strike out an American proposal to administer the islands as an integral part of the United States.

Though our friends the Russians generously concede that it is right and proper for the United States to control the Pacific isles, the emphasis, it strikes us, is a bit heavy on that which might be regarded as right and proper; but, oh, so very, very light on the control they would permit us to exercise over them.

Mr. Speaker, to agree to any of those conditions to a trusteeship over those dearly won Pacific islands would be to beggar the heroism, discount the sacrifices, insult the memory, of the thousands upon ten thousands of our servicemen who laid down their lives on those enemy-occupied and disease-infested atolls that liberty might not perish on

this earth. Is it possible that those who represent us in the United Nations conferences would barter away America's honor upon such base considerations? May God forbid it.

Mr. Speaker, these islands of the Pacific mean nothing to the defense of any Eurasian country, least of all to the Russians who propose these humiliating conditions. But to America, upon which rests the unwelcome burden of the maintenance of the peace of the Pacific, they mean everything. And we should have them. And not upon any conditions that might be laid down in councils held behind the iron curtains, but by the right of conquest, the letting of the blood that won them.

Mr. Speaker, let us hear no more of mandates and trusteeships and stand up for our dearly purchased rights for once if never again. Let us pass the Gearhart resolution—House Joint Resolution 137—and be done with this.

#### EXTENSION OF REMARKS

Mr. GEARHART asked and was given permission to extend his remarks in the Record.

Mr. HART asked and was given permission to extend his remarks in the Record and include an editorial.

#### EUGENE MEYER

Mr. CELLER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. CELLER. Mr. Speaker, I listened with considerable chagrin, if not sadness, to the gentleman from Mississippi, who used this Chamber as a forum to asperse the character of a good citizen, Eugene Meyer, publisher of a splendid paper, the Washington Post of this city. The gentleman again shows his flair for intolerance—intolerance of freedom of opinion. He spoke of this gentleman as being a publisher of a "Jewish newspaper." He undoubtedly used the word "Jewish" to connote opprobrium—to connote contempt. I must resist efforts of that sort with every power within me. I ask the gentleman to read the Federalist—the writings of Jefferson—and read what he said with reference to freedom of opinion and freedom of speech. I fear me that the gentleman from Mississippi just cannot take it. He gets rather excited when anyone disagrees with him. The right to disagreement is a precious right in our land, and Eugene Meyer has that right, as everyone else in this House or this country has.

#### PALESTINE

Mr. KLEIN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks and include a White House statement.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. KLEIN. Mr. Speaker, I am sure most of the Members of the House have

read the intemperate and insulting remarks of the Foreign Minister of Great Britain, Mr. Bevin, about the President of the United States. Not only are those remarks false, as remarks by that gentleman usually are when they regard Palestine, but they are insulting as well to the head of a friendly nation.

I call the attention of this House to the fact that in 1944 and 1945, before the present Labor government was elected in Great Britain, one of the pledges they made to their people and one of the planks in their platform was to the effect that they advocated the immediate admission of 100,000 Jewish displaced persons into Palestine. They also agreed that if the findings of the Anglo-American Inquiry Committee were unanimous, they would implement them by permitting the immediate admission of 100,000 Jews. The findings were unanimous, and yet no such action was taken.

Mr. RICH. If the gentleman will yield, that is what we get for giving Britain \$4,400,000,000.

Mr. KLEIN. I am afraid I agree with the gentleman.

Now Mr. Bevin is seeking to blame President Truman for his own faithlessness and double dealing on this question and for his failure to live up to his solemn promises, or those of his Government, to resolve this problem, at least temporarily.

All right-thinking people must condemn the present regime in Palestine. This once-great Government has descended to employ its Army and Navy in military operations against defenseless men, women, and children who have lived with death for many years, and who ask only the elementary human rights of life, work, and home.

The American Government has gone on record many times as favoring the immediate admission of 100,000 Jews. I suggest that you read the White House reply to Mr. Bevin, issued yesterday.

#### PALESTINE

Mr. BUCHANAN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. BUCHANAN. Mr. Speaker, if the Government of the United States, in accordance with its repeated pledges, intends to assume practical, as well as moral, leadership in settling the dangerous controversies which threaten world peace, it must without further delay assume leadership in solving the problem of Palestine.

If our recent vacillations and procrastinations continue, the hope of any peaceful solution will become increasingly remote. Not only is the artificial hostility engendered among the Arab leaders becoming more acute but Palestine threatens to become a scene of increasing contention.

The commonwealth will come into being only when the United Nations decides, as it must, that the establishment of a Jewish commonwealth in Palestine is essential to world peace and to world stability.

Unless the international trusteeship council of the United Nations is charged with the obligation of carrying out such a decision, the commonwealth of Palestine will continue to be an ideal and not a reality. Only the concerted determination of the free peoples of the world who possess the authority can achieve a final solution of the Palestine problem.

President Truman's courageous official statement of yesterday is testimonial that a solution must be found for this question now.

Are not 6,000,000 Jewish dead sufficient or must British obstinacy destroy the remaining 1,500,000? American Jewry is outraged at this failure to get action and demands that during this interim period before the Palestine matter is resolved by the United Nations that the Palestine mandate be carried out in letter and spirit.

This Nation must assume a larger share of responsibility for Palestine than we have been willing thus far to bear.

#### EXTENSION OF REMARKS

Mr. HUBER asked and was given permission to extend his remarks in the RECORD and include an address to be delivered by Louis E. Starr, chairman of the Veterans of Foreign Wars.

Mr. LANE asked and was given permission to revise and extend his remarks in the RECORD.

Mr. GILLIE asked and was given permission to extend his remarks in the RECORD and include an editorial.

#### REGULATING THE RECOVERY OF PORTAL-TO-PORTAL PAY

Mr. ALLEN of Illinois. Mr. Speaker, I call up House Resolution 117 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for consideration of the bill (H. R. 2157) to define and limit the jurisdiction of the courts, to regulate actions arising under certain laws of the United States, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed 4 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. ALLEN of Illinois. Mr. Speaker, I yield 30 minutes to the gentleman from Illinois [Mr. SABATH].

Mr. Speaker, this resolution makes in order consideration of H. R. 2157, to define the jurisdiction of the courts, to regulate actions arising under certain laws of the United States, and for other purposes. To be more specific, passage of this resolution would bring before the House a measure to relieve the uncertainty confronting the Nation's industry because of claims exceeding five

and three-fourths billions of dollars for retroactive portal-to-portal pay. H. R. 2157 is rightly considered urgent legislation. Its passage would put an end to these uncertainties which now threaten our national economy.

Realizing that Members of Congress representing all grades and variations of social and economic opinion will want to assert themselves on this important issue, this resolution has provided 4 hours of general debate. This is a general open rule to which I think there will be no objection. Amendments to the bill are in order under the 5-minute rule, and provision is made for one motion to recommit.

Opponents of this bill will probably charge that its provisions limit the rights and privileges of labor, and they will probably try to make political capital of today's debate. They undoubtedly will say that the Republican Party has taken the side of capital and has forsaken the laboring man. This, of course, is not true. And those who should make such a statement will know it is not true. We all realize, of course, that some have built their political careers by encouraging the belief that the welfare of labor must be mutually exclusive to the welfare of capital. I cannot subscribe to this theory.

The Republican Party does not believe that capital should be brought to its knees at the feet of labor, nor does it believe that labor wants capital crippled permanently. Neither does the Republican Party believe that any of the legitimate rights and privileges of labor should in any way be diminished or, for that matter, even questioned. We believe that the future welfare of both capital and labor are inextricably bound together. We believe that both capital and labor can derive equal benefit from legislation intelligently drawn after consideration of the needs of both members of our industrial team.

I refer to capital and labor as our industrial team because the Republican Party refuses to foster the class hatred that has been, and is being, encouraged by some political groups. Such class hatred can never produce anything desirable in the way of social, economic, or political development. It is merely a vehicle by which some political charlatans hope to rise to power. This philosophy can lead only to the total destruction of our economic and social system, and finally to the collapse of the form of government under which we, as a people, have chosen to live.

Visualizing capital and labor as an industrial team, the Republican Party is cognizant of the fact the one can do nothing without the cooperation of the other. What helps one, benefits the other; and, just as indisputably, what harms one, hinders the other.

Those who recognize and appreciate the problems of both members of the team can undeniably do more to insure its smooth operation than those who imagine a cleavage, and therefore believe that one member must be crushed that the other may survive.

It is my sincere hope that all legislation passed by this Congress will be drawn in a spirit of sympathy for both



members of the team. In my opinion, such legislation should restrict neither, but should simply define the rules, thereby increasing the benefits of both. I do not find any of the provisions of H. R. 2157 inconsistent with this concept.

In effect, this bill would outlaw claims for make-ready time in portal-to-portal suits. It would also establish restrictions on actions of employees to recover other forms of overtime pay to which they have no just claim. To this extent, this bill would repeal those sections of the Fair Labor Standards Act, the Walsh-Healey Act, and the Bacon-Davis Act which are inconsistent with its provisions.

Because many of these claims cover past years on which management has long since closed its books, H. R. 2157 protects employers from unexpected liabilities, which in many cases exceed working capital, and in some cases exceed the employer's net worth. In other words, these suits would force many employers into bankruptcy.

This measure would protect employers who acted in good faith, consistent with court decision and Government regulations. It takes into consideration the custom of the industry regarding payment for make-ready time. In most union contracts make-ready time is considered in fixing wages for hours actually worked. In such cases, these portal-to-portal suits are not morally justified.

The bill would also allow an employer to compromise with employees to settle disputes involving claims for other accrued wages. Under existing laws, no such compromise is possible. Either workers must strike, or employers must lock out their employees. This legislation was drawn in recognition of the just points in both sides of the argument.

Realizing that collection of these claims would in many instances plunge industrial corporations into bankruptcy, workmen themselves generally regard the portal-to-portal suits with disfavor, particularly the effort to make collection retroactive.

I cannot believe that organized labor, which has filed these claims against industry, would be willing to wreck companies by which it is employed in order to collect money for which it has no legitimate claim.

The opinion of a large segment of organized labor on the portal-to-portal issue was expressed recently by John P. Frey, president of the metal trades department of the American Federation of Labor. I will quote a few excerpts from his article in the February issue of the American Federationist, the official magazine of the American Federation of Labor:

In reaching a decision on the question of suing employers for so-called portal-to-portal back wages, the executive council . . . was governed by one basic consideration . . . its faith in and loyalty to the principle of collective bargaining.

When labor and management enter into negotiated agreements, the integrity of both is involved. Unless such agreements can be depended upon by both parties, collective bargaining cannot be successfully continued.

Remember that is a representative of organized labor speaking. He continues:

When agreements have been negotiated and signed, they specifically express what the employers are willing to pay in the field of wages and what trade-unionists are willing to accept for the period covered by the agreement.

In the application of all terms and provisions of agreements . . . the question of each party's good faith and integrity is involved. Without this good faith and integrity, collective bargaining would be of little, if any, value to either labor or management.

The spokesman for the American Federation of Labor then sums up the crux of the point in question in these words:

When an agreement is entered into the employer knows what his labor costs will be, so far as wages are involved. Trade-unionists under the agreement pledge themselves not to introduce new questions of wages during the life of the agreement unless the agreement specifically contains a provision for the reopening of the agreement.

To inject now the question of back pay for portal-to-portal time would be an admission that when wage agreements were signed by trade-union representatives they had been insincere during the negotiations and had held mental reservations which they were unwilling to discuss with employers while seated at the conference table.

That is the view of organized labor on the portal-to-portal-pay question.

Having carefully considered the needs and desires of this body before reporting this resolution from the Rules Committee, I earnestly urge its adoption. The bill, consideration of which it makes in order, should, in my opinion, be passed to protect our economy from chaos and uncertainty which might lead to catastrophe.

**THE SPEAKER.** The gentleman from Illinois has consumed 10 minutes.

The gentleman from Illinois [Mr. SABATH] is recognized.

#### RULE ON GWYNNE BILL

**Mr. SABATH.** Mr. Speaker, the chairman of the Committee on Rules, my colleague the gentleman from Illinois [Mr. ALLEN], has splendidly and adequately explained the rule which makes in order H. R. 2157, an ill-advised and poorly constructed catch-all for harrying labor unions.

This is, I am happy to say, a broad and liberal rule, for which, of course, I am grateful, notwithstanding that I was denied the opportunity of bringing before the Rules Committee the minority members of the Committee on the Judiciary who signed the minority report, in order that they might at least be given a chance to explain their opposition to the bill, and why they felt the rule should not be granted with unseemly haste.

I did not, of course, expect much more than I received, namely, that the rule was gavelled through; and I did not have many on the Rules Committee to support me in my urging that additional time be given for consideration.

#### GUILTY CONSCIENCE DICTATES WORDS

As has been explained by my chairman, the rule provides for 4 hours of general debate and for amendment. Thus the Members, either in debate or

under the 5-minute rule, will have an opportunity to be heard.

It seems to me that my chairman must have a guilty conscience, for he began his remarks by saying that Democrats very likely would charge the Republicans with unfriendliness to labor. No one had yet made that statement on the floor; but it seems to me, nevertheless, that the implication is there, and the Democrats will be compelled to repeat, again and again, the clear and undeniable charge that the Republican Party is unfair to organized labor, and to labor in general, and always has been.

#### VICIOUS AS ANY BILL EVER PRESENTED

This bill, to my mind, is as vicious as any other antilabor bill ever brought to this House. You remember that last year we had a Gwynne bill before us. The committee has taken that bill and has made it more drastic than the original. They even ignored the recommendation of their own subcommittee of the Committee on the Judiciary that a 3-year limitation of liability be substituted for the absurdly brief period in this bill of 1 year in which to bring proceedings for recovery of wages.

In actual fact, some of the most restrictive and unfair provisions have been embodied in the present bill.

The proponent of this bill stated before the Rules Committee that it does not deprive labor of any rights or benefits; whereupon I inquired why then the bill was before us for a rule.

But the gentleman could not answer.

He knows, and I know, and all those familiar with the bill know, that it is as stringent and restrictive of the rights of labor as any that ever came before us here; and it aims, if not utterly to destroy labor, at least at weakening the cause of labor by taking away legal rights of equity.

The Democratic members of the Committee on the Judiciary who have signed the minority report will, I am certain, more thoroughly explain my contention, and make clear why my position is correct, and show that the bill is antilabor and in the interest only of employers. Its effect is to emasculate the Bacon-Davis Act, the Walsh-Healey Act, and the Fair Labor Standards Act.

#### PORTAL-TO-PORTAL PAY PROVISIONS RESTRICTIVE

As to the portal-to-portal-pay provisions, I concede that some suits of this character have been unfairly instituted; but in the majority of instances such actions are justifiable, and are not based merely on walking to and from the place of work but on work actually done.

The minority report from the Committee on the Judiciary says in this connection:

The phrase "portal-to-portal" is a bad label to designate all these suits, suits which are for "time worked" as in the following:

- (a) Checking machinery.
- (b) Adjusting and readjusting safety equipment.
- (c) Repairing, oiling, washing machines.
- (d) Checking and sharpening tools.
- (f) Taking inventory.
- (g) Submitting to a periodic physical examination.

(h) Travel time within the plant or mine, which sometimes consumes as much as a half hour.

(i) Cleaning and washing off the body grease, soot, and toxic matter.

Nevertheless, this legislation will adversely affect all suits that have been filed and which may be filed in which justice may demand that labor receive extra pay and extra compensation for extra work performed pursuant to orders, and which I feel they are properly entitled to.

#### LAWS PASSED IN GOOD FAITH

We have in good faith passed laws giving labor certain rights and privileges. This bill would repeal those rights and privileges given by the Congress and upheld by the courts. It is, in my opinion, manifestly unfair to do that. However, in view of the actual circumstances, of our fundamental law, and the precedents of the courts, it is not really necessary for me to dwell upon this point because this bill will never become law. It is unconstitutional beyond doubt. It is ex post facto legislation, and the courts will not violate the Constitution by holding it to be within the Constitution. That, at least, is my opinion.

#### REPUBLICANS FEARFUL OF SHADOWS

Our Republican friends have said they are fearful that if this bill is not passed that the poor manufacturers, industrialists, and employers of labor may be ruined; that they cannot survive if labor is not shorn of its rights under the Constitution to proceed with legal action to recover what they feel to be just and fair and due them.

#### WHERE ARE THESE INDUSTRIALISTS FACING IMMINENT RUIN?

So far I have been unable to find any of those manufacturers or employers that have been ruined or are imminently threatened with ruin by the Labor Relations Act.

If you will read the newspapers and the financial reports, whether it be Dun & Bradstreet's, the New York Journal of Commerce, the Wall Street Journal, or any other, and you know that none of them is unduly friendly to labor, you will find that not only are the manufacturers and the industrialists, the businessmen of this country, in a splendid position, but they have made more and more millions in 1945 and 1946; and even in this year are increasing their profits to such an extent that they are now obliged to declare extra stock dividends and cash dividends, thereby increasing their shares outstanding, so it cannot be shown how much per share is being paid. They are accumulating great surpluses and retiring their indebtedness.

#### PROFITS INCREASING BY LEAPS AND BOUNDS

In view of the fact that their profits still are increasing by leaps and bounds I do not think they are going to be seriously hurt.

Mr. Speaker, I ask unanimous consent to include as a part of my remarks some reports and articles as well as statements relative to the profits and standings of these corporations which my colleague,

the Chairman of the Rules Committee, is fearful might be ruined or destroyed.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. SABATH. Mr. Speaker, I am indeed grateful that business is prosperous. I hope that the country and business generally will continue to prosper notwithstanding the temporary control of the legislative body by the Republicans. In my opinion, with all their effort, they will not be able to arrest the growth of business, profits, and the prosperity of our Nation. Because of these ever-increasing profits, and increased materials cost, the cost of living has gone up tremendously, as you all must know. In the last six months the cost of food, yes, of living generally, has increased over 50 percent.

#### DUN & BRADSTREET REPORTS SHOW RISES

No one can successfully accuse Dun & Bradstreet of being too favorably disposed toward labor or toward the Democratic Party. Dun & Bradstreet are a well-known, highly respected firm of business reporters and analysts whose credit and market reports are standard in all business circles.

Their current consolidated food-price index shows that food costs hit an all-time high on February 25 of \$6.62 a pound for 31 standard food staples. This was the price per pound arrived at by adding up the cost per pound of these 31 items. This is a rise of \$2.42 since last July, or 55-percent increase since the original OPA was killed. There has been an increase of 13 cents a pound in this index in the short time since the last high point last November 19.

Or take the Dun & Bradstreet commodity index, which shows the level, in terms of percentage over their base year, of basic commodities, which includes foodstuffs, grains, metals, rubber, leather, hides, cotton, rayon, and wool.

This index reached an all-time high on February 25 of 252.33, a rise of 72 points or 40 percent since January 1, 1946, when the basic commodity index stood at 180.

#### CONFIRMED BY FEDERAL RESERVE

These exorbitant increases are confirmed by every official source. The Department of Labor, the Department of Commerce, the Federal Reserve, all point to the same conclusion. The newspapers published the story of the figures from the Bureau of Labor Statistics showing a 33½-percent rise in the wholesale prices of foods in 1946, all of which took place after OPA was done in.

The Federal Reserve cost-of-living index shows a jump of 20 points, from 133.3 in June 1946 to 153.3 on December 31, 1946.

In the United States a coalition of Republicans and other reactionaries killed the Office of Price Administration after a violent campaign of propaganda and misrepresentation from big business; but Great Britain and Canada kept their price controls on. Here are the com-

parative figures from the Federal Reserve Bulletin:

	1942	1946	Increase
	Points	Points	Points
Great Britain.....	200	204	4
Canada.....	117	127	10
United States.....	117	153	36

In other words, because the vast pressures brought by organized greed in an unparalleled campaign of misrepresentation brought about the end of effective price controls, prices have increased in the United States nine times as much as in England in the last 4 years, and almost four times as much as in Canada. England and Canada have both had genuine and absolute shortages in many items; the United States has been saved from the wildest kind of inflation—thus far—only by the fact that we are the richest Nation in the world in our natural resources and in our national production. Our shortages have been relative, and due to the increase in purchasing power and to maldistribution and not to absolute shortages of any commodity except perhaps sugar and soap.

#### WORST STILL TO COME

Even so, economists and statisticians agree that the worst is yet to come.

The Bureau of Labor Statistics says today that wholesale prices have reached a new high not yet felt at the neighborhood market.

You and I, Mr. Speaker, and the gentlemen of this House, may not feel that rise so acutely. It is doubtful if the members or the employees of the National Association of Manufacturers or of the National Association of Retail Dry Goods Dealers or of the Textile Institute will feel it appreciably.

But the workers—the clerks, the machinists, the laborers, the mechanics, the railroad men, the newspaper reporters, and telegraph messengers—will feel it and feel it hard.

#### REAL WAGES FALLING

The wages and salaries and annuities of the 18,000,000 white-collar workers and pensioners have not kept pace with this rapid spiral of prices. Department of Commerce figures show that average weekly earnings and average hourly earnings have been declining steadily for the last 2 years, in spite of wage increases here and there.

Real wages are falling more rapidly. Every price increase is a wage and salary cut for the little man.

If the real wages of John Jones, laborer, were \$2,000 a year on January 1, 1946, and he has had no increase in dollars, then his real wages today are but half of that.

#### RENTS UP NEXT

It will not be long until the rent ceilings are pierced or perhaps destroyed.

That will mean another cut in the real wages of the people.

Can you please tell me how these people can continue to exist when you continually pass legislation which gives in-



dustry greater power, greater opportunity to push up production costs artificially, to push up the cost of living, pass all their added expense and bookkeeping charges on to the consumers, who are the workers, and yet evade the law we passed in good faith and the courts sustained?

#### RELATIONS PEACEFUL NOW

In spite of the unbalance between corporation earnings and individual earnings; in spite of high living costs and low real wages; in spite of all the labor-baiting and price raiding that is being done; in spite of an unending campaign to destroy labor organization and the rights of the common people, we are in a period of great peace right now.

Labor and capital exhibit almost perfect harmony outside of Washington. Our employment levels are high. Purchasing power is great despite rising prices. Our national production was never so high.

We should not destroy this truce.

But if we pass this bill, which is class legislation, which is unconstitutional ex post facto legislation, which is punitive and discriminatory legislation, and deny labor the right to recover wages properly due under the law and under their contracts, at a time when employers can and should meet the assessments without financial injury, we are going to cause trouble.

#### WILL BE FORCED TO DEMAND MORE INCOME

If people cannot live decently on what they earn and we make it difficult or impossible to recover through the courts and the process of law, working people will be compelled, yes, forced, to demand higher wages and higher incomes.

I know that when that time comes all these businesses and industries will say, as they have said in the past, "Oh, we cannot afford it."

But when their true report is made and they send the statement of their real financial condition to their stockholders you will find that the statements that they have been making to mislead the American people are not founded on fact, and are untrue.

While there have been some instances of operations at a loss, they have or will recover it in rebates on taxes under the law that was passed. Let me remind you again that the Ruml tax plan "forgave" some six billions of corporate tax liabilities, and that the repeal of the excess-profits taxes gave back more billions in gifts.

Let me again remind you that estimates based on Government figures indicate that profits in 1947 will reach the staggering figure of \$20,000,000,000.

#### FARMERS ARE PROSPERING

I saw a report a few days ago that showed the tremendous progress that has been made not only by American industry but also by agriculture.

If my recollection is correct, this showed that agriculture, due largely to Democratic legislation, has increased its profits by some 135 percent.

The December issue of Survey of Current Business, an official reporting serv-

ice of the Department of Commerce, shows, for instance, that cash income from farm marketing in 1946 would substantially exceed \$26,000,000,000.

Contrast that with the low point of \$5,000,000,000 in 1932, when a Democratic, progressive, responsible administration took over after 12 years of Republican misrule.

Wheat and other grains are still going up. Hogs were selling last Monday at an all-time high of \$30, and only buying resistance brought down that phenomenal price by a dollar.

Do not misunderstand me, Mr. Speaker; I do not begrudge the farmers of this Nation one cent of their incomes. Unless the farmers are prosperous the country cannot be prosperous. They work hard for what they make.

#### SHOULD NOT FOLLOW TRUSTS' EXAMPLE

But I hope and pray that they will not follow the example of the avaricious industrial combines and demand and insist upon ever higher prices; for instance, the poor packers, such as Armour & Co., who, in 1946, by their own report, made profits of \$20,700,000, or Swift & Co., with reported net profits of \$16,394,739.

And there are many others which have increased their earnings in the same proportion.

These tremendous increases in profits are due to their successful emasculation and murder of OPA, and their long strike against the American consumer when they deliberately withheld meat from the market waiting for the end of price controls and a chance for quick and easy profits at the expense of consumers—and the consumers are all of us, but especially the workers and the farmers who are also the producers. The kind of manipulation was worked in dairy products, vegetables, and fruits.

#### JUST AS TRUE IN HOUSING

You must remember that that also applies to housing, when the builders groups insisted that if price ceilings on homes and controls on materials were removed they would be in position to supply the need of housing for our veterans at reasonable prices the veterans could pay. I will leave it to you whether they have kept their promises.

How many homes have they built in the last 6 months? The few that they did build they hold for sale at exorbitantly high prices. The only excuse they give is that it is due to the cost of labor. The fact is that construction labor has increased but 10 percent, while the price of homes to the veterans have increased from 33 1/3 to 100 percent. This should and will be remembered by the veterans and the people in general.

#### FARMERS OPPOSE UNION WRECKING

Who wants these union-wrecking bills?

Not the farmers, Mr. Speaker.

Here is a news story from the conservative Washington Star provided by the equally conservative Associated Press—and I challenge any Member to say that the Star or the Associated Press are pro-

New Deal—which tells of one public declaration on that:

#### FARM LEADERS OPPOSE CRIPPLING OF UNIONS

(By the Associated Press)

DES MOINES, February 15.—Leaders of two large farm organizations today decried what they termed existing antagonisms between farmers and urban laborers.

Joseph W. Fichter, Columbus master of the Ohio State Grange, and Ole L. Olson, Buxton, N. Dak., president of the Farmers Union Grain Terminal Association, voiced their sentiments at a panel discussion of the ninth annual National Farm Institute on problems to be faced with declining farm prices.

"We farm folks should oppose any legislation considered by Congress which would seriously cripple our labor unions," Mr. Fichter asserted. "Farm folks must come to see the point of view of the great labor groups of the city."

Mr. Olson declared that the farmer must realize "that the stomach of the worker is his greatest market."

William G. Murray, economics chairman at Iowa State College, said he believed that farmers would be in a better position now than after World War I if prices should decline because they have a better cash reserve.

Mr. Olson asserted that the large commercial farm operator would be better off, but that the small farmer did not have the necessary cash backlog.

#### WOMEN AND CONSUMERS OPPOSE UNION WRECKING

It is not the women, who are the buying agents for our great mass of ultimate consumers, Mr. Speaker.

Here is another story from the Washington Star of February 17, Mr. Speaker, which tells about the decisions of one of the largest and most respected of the national women's organizations, the Women's International League for Peace and Freedom; and this is typical of the attitude of thinking women and thinking consumers everywhere:

#### WOMEN'S LEAGUE ASKS CONGRESS TO REJECT ANTI-UNION BILLS

Rejection by Congress of all proposed anti-union legislation was asked last night by the national board of the Women's International League for Peace and Freedom, which closed a 2-day meeting at the YWCA downtown center, 614 E Street NW.

The board suggested strengthening of Federal arbitration machinery and the provision of competent industrial relations advisers for both labor and management. In a resolution it said both labor and management should assume responsibility in making and keeping contracts, and should make their records available for public inspection.

The resolution opposed particularly the anti-closed-shop proposals now before Congress and legislation to ban industry-wide bargaining.

The board in other resolutions:

1. Expressed opposition to the bill of Representative KNOTSON, Republican, of Minnesota for a 20 percent across-the-board cut in income taxes. Objections were raised to cuts in useful peaceful functions of Government and to tax cutting in general until the end of this inflationary trend.

2. Urged passage of the Wagner-Ellender-Taft housing bill but asked elimination of the unfortunate pattern of (racial) segregation now practiced in public housing.

3. Backed the administration's reciprocal trade agreement policy.

4. Called for the United States to accept a fair share of the war's displaced persons, suggesting that 400,000 refugees could be admitted; half or even less of the war years'

unused immigration quota numbers were used for that purpose.

Miss Annie Lee Stewart, of Chicago, national president of the organization, presided at the meeting.

#### WHERE IS LABOR'S SHARE?

They have all prospered; they are all making money—the farmers, the packers, the manufacturers, the brokers, the retailers.

But when labor comes and says, "You gentlemen have added this extra cost to the price of what you have produced and sold to us and to other American consumers and to the Government, and we want our share," why, then, that is not so good, and all the professional labor baiters rush in and demand a new law. During the war we heard that labor should not strike while the country is at war, but now we just hear that labor should not strike.

We have this Gwynne bill to restrict the rights of labor in the courts, although the labor baiters want to get the unions into court.

#### MOST PAY SUITS JUSTIFIED

In some instances, perhaps, as I have said earlier, the so-called portal-to-portal pay suits are not justified; the burden of unpaid work is too little to support the court action. Perhaps some have been frivolous or retaliatory.

The fact remains that most of these actions have been entered into, not only in good faith but under great justification, against employers always ready and willing to chisel a little free work from the men and women who work for them. The employees performed the work; the employers benefited; the employees got nothing but tired.

We should not by our action here today preclude them from recovering that which is actually due them.

To deprive the workers of rights and benefits which are theirs, which we granted them by law, and which the courts have approved, is manifestly unfair, unwarranted, and unjustifiable.

#### THIS BILL IS AGAINST LABOR

If you think such a bill as this is in the interest of labor, I must of necessity disagree with you.

You surely cannot honestly maintain that there is nothing in this bill inimical to the rights of organized labor and of all workers.

My colleague the gentleman from Illinois [Mr. ALLEN] read extracts from testimony given by one of the minor labor leaders, and I think from an actually uninformed and unthinking leader, who must, unfortunately, be one of those who always play into the hands of the labor squeezers.

Read instead the statements of William Green, the head of the great American Federation of Labor, and of Philip Murray, the head of the great Congress of Industrial Organizations. You will find out then whether intelligent and responsible labor leaders favor this legislation. You will learn what they think of it.

I say again it is one of the most drastic antilabor bills ever brought in here.

#### REPUBLICANS DO NOT SERVE CAUSE OF LABOR

Of course, Mr. Speaker, you Republicans are in power here.

You have a great majority; but not because you promised before the election that you would legislate against labor. Most of you promised labor you would be fair, that you would see that no legislation was enacted which would be detrimental to their interest.

But now, after your election, after you are in control, you come in here and with almost complete unanimity you bring in discriminatory legislation of this kind and you consistently vote against the interests of labor.

My colleague has asserted that the Republican Party does not serve the big interests. Well, surely, it is not serving the interests of labor.

Oh, I know there may be a few gentlemen on our side who are unfriendly to labor, and they may join with you, which I naturally deplore and regret, but you do not need their assistance at this time.

#### DEMOCRATIC PARTY IS PEOPLE'S PARTY

I think that in the best interests of the Nation the Democratic Party should and will continue to be the party of the people—the party which has the interests of the workers and the farmers and the small businessmen and the little people generally always at heart.

I hope and I expect that we will, with very few exceptions, continue to vote that way, work that way, strive that way, and we will again be in a position to show the country that the Democratic Party is a party that all those who believe in justice and fair play and in mature, responsible government can and will support, to restore a Democratic majority in the Congress and at the right time to reelect a Democratic President.

#### PRESIDENT TRUMAN CAN BE REELECTED

For President Truman, Mr. Speaker, if he consents to run, will be reelected, because the country realizes that he is honest and fearless, and has the interest of the country and of the people at heart.

Oh, I appreciate that the Wall Street controlled cartels and industrial czars, because of their inability to use him, now and until election day, will exert every conceivable effort to defeat him. And that, I presume, will be followed by a few labor leaders, like Lewis, but every honest and sincere labor leader will recognize that it is for their own and the country's interest to reelect him. The Republicans, of course, who are controlled by the interest, will again nominate a man that they can own and control.

#### VOTERS ALREADY REPENT

All I wish to say in conclusion is this: The big industrial leaders, almost without exception, misled not only the American people but the Congress in promising that if OPA were done to death, price regulations thrown down the well, and free enterprise given its head—but enterprise is not free, but is saddled and bridled and ridden with a tight rein by cartels and trusts and monopolistic trade associations—the black market would be eliminated and prices would be held down by natural laws.

It looks as if those natural laws, so-called, which are not laws but the inevitable result of uncontrolled greed, just did not work, or did not exist.

Today neither those who planned and paid for that propaganda barrage, nor anyone else, can honestly deny that their purposes were purely selfish and were for the purpose of hiking prices and profits, and that has been the result in almost every line. This the American people are commencing to realize, and to recognize as a fact.

The proof is in my mail; for almost daily I receive communications from many who state that they permitted themselves to be misled by these false statements and assurances.

Mr. ALLEN of Illinois. Mr. Speaker, does the gentleman from Illinois [Mr. SABATH] care to use any more of his time?

Mr. SABATH. Knowing the situation, and that the rule will be adopted, and in view of the fact that there will be 4 hours of general debate, I shall not take more time now.

Mr. ALLEN of Illinois. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

Mr. MICHENER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 2157) to define and limit the jurisdiction of the courts, to regulate actions arising under certain laws of the United States, and for other purposes.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H. R. 2157, with Mr. JENKINS of Ohio in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the time is divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

Mr. MICHENER. Mr. Chairman, there has been considerable talk on the rule explaining the bill. In addition, my very good and distinguished friend, the former chairman of the Committee on Rules, the gentleman from Illinois, [Mr. SABATH], has just made a political speech. I hope, in the beginning, that we all realize we are legislating or attempting to legislate here in the interest of the American people. I hope we all realize that this bill is not a Democratic bill, a Republican bill, a labor bill or an anti-labor bill. It is an honest effort to deal with an emergency which at the moment faces the economy of the country.

If there ever was a time when there should be no thought of class legislation in this House or in the debate of Members, it is at this good hour. The Committee on the Judiciary has given long hours and days in an effort to bring before the House legislation which will be helpful—not perfect, no, but we have not asked for a closed rule. We simply bring the bill before the House for its consideration and action. The subcommittee which held the hearings has done a grand job and a laborious one. There has been no undue speed. There has



been no rush. Every group and every interest which wanted to be heard has been heard, and as a result I hold in my hand the printed hearings consisting of 512 pages. These hearings have been available for several days. The report of the committee is available. It explains in detail just what this bill attempts to do and the reasons why this attempt is being made. The members on the majority side are Mr. GWYNNE, of Iowa; Mr. GOODWIN, of Massachusetts; and Mr. KEATING, of New York. The minority members are Mr. WALTER, of Pennsylvania; Mr. BRYSON, of South Carolina; and Mr. LANE, of Massachusetts. These gentlemen heard the witnesses, asked them questions and studied the problem with them. I am sure they are best able to discuss the details of the bill.

Mr. Chairman, this bill had its genesis in the Gwynne bill—H. R. 584—on which the hearings were held. After completion of the hearings and due deliberation, the subcommittee prepared another draft of the bill, which was further considered by the full Judiciary Committee, and that committee wrote the bill—H. R. 2157—which is now before the House. In short, the bill as here presented was not written by anyone outside of the Congress.

There will be 4 hours of general debate. It is hoped that all Members desiring will be given an opportunity to express their views in connection with this proposal. At the conclusion of the general debate, the bill will be read line by line for amendment. We are not considering this bill under a closed rule, and all Members desiring will be permitted to offer germane amendments.

Much care has been taken in preparing the committee report. It is complete and understandable, and any additional statement on my part would be superfluous. I therefore want to impress upon the membership that report, which is as follows:

#### GENERAL STATEMENT

H. R. 2157 may be divided into two parts. One part deals with certain claims, actions, and proceedings concerning alleged wages and overtime compensation, based on activities not at the time in question considered compensable, either (1) by express agreement between employer and employee, or (2) by custom or practice at the time and place of employment. These are popularly known as portal-to-portal claims or suits, although the term is not entirely accurate. The other part relates generally to claims, causes of action, actions, and proceedings under the Fair Labor Standards Act, the Walsh-Healey Act, and the Bacon-Davis Act.

#### PART I. CLAIMS BASED ON ACTIVITIES NOT AT THE TIME CONSIDERED COMPENSABLE BY EXPRESS AGREEMENT OR BY CUSTOM OR PRACTICE

##### 1. Nature of the problem

The Fair Labor Standards Act requires the payment to all employees under the act of a certain minimum wage, together with overtime compensation at a rate not less than one and one-half times the regular rate at which each is employed. Section 16 (b) provides that any employer who violates these provisions "shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages."

Provision is made for an action by any employee in behalf of himself and other employees similarly situated, in which attorney fees may also be taxed as part of the costs against the employer.

The Fair Labor Standards Act does not define "work" or "workweek" and does not prescribe what preliminary or incidental activities shall be compensable under the provisions of the law. That was left to be settled by the employer and employee, either by express agreement or by implied agreement, based on the custom or practice in that particular place of employment. That had been the general situation for many years prior to the passage of the act.

In *Anderson v. Mount Clemens Pottery Co.* the Supreme Court had before it important issues "concerning the proper determination of working time for purposes of the Fair Labor Standards Act." Involved was the question whether time spent in walking on the employer's premises to the work station and time spent in certain preliminary and incidental activities must be included in the compensable workweek.

The Court said:

"It follows that the time spent in walking to work on the employer's premises, after the time clocks were punched, involved 'physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business' (*Tennessee Coal Co. v. Muscoda Local* (321 U. S. 590, 598); *Jewell Ridge Co. v. Local No. 6167* (325 U. S. 161, 164-166)). Work of that character must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or contract."

A similar conclusion was reached in regard to the preliminary activities.

The far-reaching result of this new doctrine may be demonstrated by applying it to a concrete situation.

For example, suppose an employee receiving a 70-cent regular hourly rate and who had already worked during that week the statutory maximum number of hours had also put in 30 minutes each day in the walking or other incidental activities referred to by the Court. For a 5-day week, such employee could recover under section 16 (b) \$2.625 in addition to the wages previously agreed upon between him and his employer either by express agreement or by custom or practice. Assuming he worked 50 weeks in the year, the recovery for that period would be \$362.50. There being no Federal statute of limitations covering the Fair Labor Standards Act, the claimant's right of recovery would extend back to the beginning of his employment, limited only by the effective date of the act (June 25, 1938), and by any applicable State statute of limitations. If the latter were 4 years, the liability of the employer would be \$1,050, plus attorney fees and costs. Multiply that figure by the number of employees similarly situated and an idea will be obtained of the employer's potential liability. Apply these calculations to the total number of employers under the act and an idea will be gained as to the seriousness of the threat to the national economy.

It must be remembered also that the action for liquidated damages under the wage-hour law cannot be waived or compromised by agreement between the employer and employee (*Brooklyn Savings Bank v. O'Neil*, 323 U. S. 698).

Nor can the Court avoid the assessment of the full amount of liquidated damages, regardless of the good faith of the employer.

"Is this provision of the law as to liquidated damages mandatory or discretionary? Since the act has been violated in good faith in this case, we would indeed like to hold that it is discretionary. It seems a keen injustice for employers bewildered by strange legislation and confused by divergent au-

thority in the courts to be subjected to such a measure. Yet no matter how much we lament its harshness, the section appears to be mandatory, and virtually all the courts have so construed it (*Missel v. Overnight Transportation Co.*, 316 U. S. 572)."

#### 2. Extent of the problem

Following the decision in the Mount Clemens Pottery case, many suits were filed in all parts of the country seeking to recover large amounts claimed to be due under the formula laid down in that case.

The quarterly report of the Director of the Administrative Office of the United States Courts, dated February 13, 1942, points out that between July 1, 1946, and January 31, 1947, 1,913 such cases were filed in the Federal district courts. Of this number, 398 did not claim a definite amount but left the court to establish how much was due. The remaining 1,515 cases claimed a total of \$5,785,204.606. Sixty-two percent of the 1,913 cases commenced during the 7-month period were filed the last month thereof, January 1947.

The report, of course, does not include the number of similar cases filed in the State courts.

Considerable evidence has been presented as to the impact of these suits in particular industries. For example, one listing of suits filed in all parts of the country shows 395,223 employees claiming a total of \$775,705,800, or an average of over \$1,900 for each claimant. One incident is known where the amount claimed for a single employee is \$10,000. The fact that the time period involved includes the war years when wages were high with many hours worked over the statutory maximum, has greatly increased the potential liability. Then, too, the coverage of the Fair Labor Standards Act has been greatly extended since its effective date in 1938. The Administrator estimated as of October 4, 1945, that the act applied to 21,000,000 workers.

The serious nature of these claims is illustrated by the largest settlement reported to date. Under this settlement, an employer agreed to pay a total of \$4,656,000 to 4,200 employees and covering a period from September 9, 1940, to September 9, 1946, or an average of \$1,108 per employee.

The procedure in these suits follows a general pattern. A petition is filed under section 16 (b) by one or two employees in behalf of many others. To this is attached interrogatories calling upon the employer to furnish specific information regarding each employee during the entire period of employment. The furnishing of this data alone is a tremendous financial burden to the employer.

One employer testified that he had been called upon to furnish information concerning 462 claimants. The data called for included job classification for each of 425 weeks, the scheduled starting and quitting time, total number of hours for which compensation was paid, the regularly hourly rate paid, number of hours for which payment had been made at overtime rates, number of hours shown on their cards between punching the time clock in and out. In all, 4,123,050 items would need to be listed separately at a total estimated cost of \$80,000. The same witness estimated the total cost to supply data for all employees, plus the cost of defending the suit, would be \$300,000.

In addition to the financial problem, the suits constitute a serious threat to industrial relations and to the principle of collective bargaining. In some cases the time now sought to be declared compensable had been the subject of collective-bargaining agreements.

One good illustration will be found in the coal industry. For many years, both coal miners and operators generally agreed that "traveltime" was not worktime. Wages

were adjusted on that basis. In fact, it was the subject of collective-bargaining agreements between the operators and the union. In accordance with this understanding, the Wage and Hour Administrator ruled that such traveltime was not worktime under the act. Thereafter, in the case of *Jewell Ridge Coal Co. v. Local No. 6167, United Mine Workers* (322 U. S. 756), the Supreme Court of the United States held that, notwithstanding the collective-bargaining agreement, traveltime was worktime. This decision had the practical effect of creating new and unforeseen contingent liabilities which both parties had deliberately attempted to avoid.

The successful prosecution of these suits will cost the Federal Government a staggering sum of money. The amounts paid by employers having cost-plus-fixed-fee contracts, together with litigation expenses, are all chargeable against the Government. The Comptroller General has so decided (Comptroller General Decision B-38642, 23 Comp. Gen. 439). There will also be a loss of revenue through deductions and refunds in taxes.

Cost-plus-a-fixed-fee contracts in the War Department during the period 1941 to 1946 totaled between forty and forty-five billion dollars. As of February 14, 1947, claims had been asserted under these contracts of about \$600,000,000. It was estimated by Under Secretary Kenneth C. Royall at the hearings that the maximum potential liability could go as high as \$1,400,000,000.

Attention was also called to the fact that during the period 1941 to 1946 the War Department also awarded approximately \$100,000,000,000 in lump-sum contracts. While the Government would not have the same legal liability as attaches in the cost-plus-fixed-fee type of contract, nevertheless there might be a moral obligation, the discharge of which would add another huge amount.

There might also be an additional, although apparently limited loss, in connection with renegotiation proceedings.

As of February 5, 1947, the Maritime Commission had received notification from 18 contractors of the filing of portal-to-portal suits against them. In five of the suits the amount claimed was \$128,500,000. The witness for the Commission estimated the additional liability as between \$50,000,000 and \$150,000,000.

"The greatest potential liability would undoubtedly arise under the ship-construction contracts. To a lesser extent, liability will presumably arise under ship-repair contracts, stevedoring contracts, terminal contracts, and miscellaneous contracts of a cost-plus-a-fixed-fee nature."

The Honorable W. John Kenney, Assistant Secretary of the Navy, pointed out in his statement to the committee the effect of the portal-to-portal pay problem on the Navy Department. He said:

"There are four fields in which the Navy has an interest. First, cost-plus-fixed-fee contracts; second, fixed-price contracts containing provision for escalation in price by reason of increased labor costs; third, terminated fixed-price contracts; and fourth, renegotiation."

Mr. Kenney estimated a potential liability in cost-plus-fee contracts of \$720,000,000. In the field of fixed-price contracts with escalation clauses, he declined to make an estimate but said the liability "will probably be substantial, as the great bulk of contracting done by the Navy Department during the war was on a fixed-price basis, and many contracts contained escalation clauses of this character." In regard to terminated fixed contracts and renegotiation, there was also the possibility of liability but apparently in smaller amounts.

The Walsh-Healey Act also concerns itself in its field with minimum wages and overtime compensation. The Bacon-Davis Act has provisions relating to minimum wages

and other conditions of employment. These two acts are therefore affected by the Mount Clemens decision. The situation described herein as to the Fair Labor Standards Act applies to that existing under the Walsh-Healey Act and the Bacon-Davis Act. The same necessity exists there for remedial legislation.

The witnesses for the Government departments called attention to the serious administrative burden placed upon the departments "in maintaining such controls and review as are necessary to safeguard the best interests of the Government." It was admitted generally that the expense involved here would be tremendous, whether the various suits were successfully prosecuted or not.

The evidence is conclusive that the maintenance of these suits or the attempts to prosecute them further is a serious threat to the welfare of the Nation. The cost would bankrupt many employers and seriously retard the activities of many others. The amount claimed in some suits is more than the value of the employer's plant. The aircraft industry reports that the suits against it amount to more than its present net worth.

The uncertainty of the present situation with its tremendous threat is seriously interfering with efforts to return to a peacetime economy with full and efficient production; it has clogged the courts with new and expensive litigation; it interferes with the right of collective bargaining; it threatens to add greatly to the cost of goods and services bought by the Government, while at the same time reducing the Federal revenue; it is a serious burden on interstate commerce.

Pay for the activities and time in question was not contemplated when the contract of employment was made. As stated by Under Secretary William C. Foster, of the Department of Commerce, at the hearings:

"Businessmen have indicated to the Department that when they worked out employment agreements, the rates of pay which were set were regarded as compensating the employee for all work done for the employer's benefit."

The amounts recovered are purely a windfall to the persons recovering them.

### 3. The remedy proposed in H. R. 2157

The claims and suits heretofore described are dealt with directly in sections 3 and 4 of this bill. These sections prohibit the maintenance of such suits in any of the courts of the United States, either Federal or State, and declare that such courts shall have no jurisdiction to proceed with such actions. These sections apply to actions commenced prior to the effective date of the act as well as those commenced thereafter.

The sections apply to all actions and proceedings of every kind based on the activities in question, including all suits for wages, damages, or penalties, actions for injunctions and criminal prosecution.

### 4. Constitutionality

The constitutional questions involved have been carefully considered by the committee. No attempt will be made here to review the many cases bearing on the subject. We call attention however to the following propositions:

A. Congress has the power to regulate the jurisdiction of the Federal district courts and may withdraw entirely the right of such courts to proceed with suits based on rights created by a Federal statute (*Kline v. Burke Construction Co.*, 260 U. S. 226).

B. It also has the power to withdraw from the State courts the right to adjudicate causes arising out of Federal statutes (*Bowles v. Willingham*, 321 U. S. 503).

C. Claims for minimum wages, overtime compensation, liquidated damages and penalties are not vested property rights within the protection of the fifth amendment. They are purely statutory rights which may be withdrawn by the Congress at any time

before they have ripened into a final judgment from which appeal cannot be taken (16 C. J. S., sec. 254; *Norris v. Crocker*, 13 How. 429; *U. S. ex rel Rodriguez v. Weekly Publication, Inc.*, 144 F. 2d, 186; *National Carloading Corporation v. Phoenix-El Paso Express, Inc.*, 142 Tex. 141; *In re Joseph T. Hall*, 167 U. S. 38; *Western Union Telegraph Co. v. L. & N. R. R. Co.*, 258 U. S. 13; *Maryland v. B. & O. R. R. Co.*, 3 How. 534).

D. Even if the right to recover overtime compensation, etc., is a vested property right, it could nevertheless be abrogated by Congress in the exercise of its constitutional duty to regulate interstate commerce (*Norman v. B. & O. R. R. Co.*, 294 U. S. 240; *Louisville & Nashville R. R. Co. v. Mottley*, 219 U. S. 467; *Second Employer's Liability cases*, 223 U. S. 1; *Philadelphia B. & W. R. Co. v. Schubert*, 224 U. S. 603; *North American Co. v. Securities & Exchange Comm.*, 327 U. S. 686; *American Power & Light Co. v. Securities & Exchange Comm.*, 67 Sup. Ct. 133).

PART II. PROVISIONS AFFECTING ALL CLAIMS, CAUSES OF ACTION, AND ACTIONS UNDER THE FAIR LABOR STANDARDS ACT (29 U. S. C. SECS. 201, 219), THE WALSH-HEALEY ACT (41 U. S. C. SECS. 35, 45), AND THE BACON-DAVIS ACT (40 U. S. C. SECS. 276A TO 276C)

### 1. Statute of limitations

Actions for the recovery of wages, overtime compensation, penalties, or damages (actual, liquidated, or compensatory) must be commenced within 1 year after the cause of action accrued. This provision applies to actions accruing both before and after the effective date of this act. Causes of action which had accrued more than 1 year prior to the effective date of the act may nevertheless be commenced within 6 months after said effective date. As to the individual claimant, the action is deemed to be commenced when he is named as a party to the action. In other words, the commencement of an action does not stop the running of the statute for all those who later become parties. Causes of action which on the effective date of the act are already barred by any applicable State statute of limitations are not revived but remain barred. In computing the 1-year or 6-month period, the period or periods of time during which a defendant is not found within the United States so that process may be served on him, will be excluded.

The limitation herein provided applies only to the statutory actions or proceedings set forth in the acts enumerated in section 5 of H. R. 2157. Actions under the common law, or under State statutes for recovery of wages are not affected.

The desirability of a uniform Federal statute of limitations has often been pointed out. In the absence of such a statute, courts are required to enforce the State statute deemed to be applicable. (See U. S. Code, title 28, sec. 725.) This has caused confusion and a lack of uniformity throughout the Nation.

### 2. The good-faith provision

The purpose of this provision is to protect the employer against the retroactive effect of changes in administrative regulations, etc. It is not limited to regulations of the Wage and Hour Administration. On the contrary, the protection extends to all regulations, etc., of the executive branch of the Government which affect the liability of the employer in the three statutes set out in section 5. Included also is a decision of a court of record to which the employer was a party in interest.

The defense must be pleaded and proved by the employer. It is a permissible defense in any action pending on the effective date of this act or commenced any time thereafter. It applies to causes of action regardless of the time when they may have accrued.

Congress has the power to provide protection to employers who have complied in good



faith with administrative regulation, interpretation, or enforcement practices. (See *Graham & Foster v. Goodsell*, 282 U. S. 409; *Skidmore v. Swift & Co.*, 323 U. S. 134.)

### 3. Settlement of claims

Section 2 (b) provides that any claim, cause of action, or action may be settled or released. This provision applies to settlement both before and after the effective date of the act. To be valid, however, such a settlement must be free from fraud or duress.

Assignment of such claims, causes of action, action, or interest therein, is prohibited.

### 4. Assessment of damages

In *Missel v. Overnight Transportation Co.* (316 U. S. 572) the court expressed regret that the imposition of the full amount of liquidated damages under section 16 (b) of the Fair Labor Standards Act was mandatory. Section 2 (g) of this act would remedy that situation. Under its provision, the court could award liquidated damages or penalties for a violation of the law only if it found that the violation was in bad faith and without reasonable ground. In that event, the amount awarded would be in the discretion of the court but not of course in excess of the maximum specified in the law under which the action arose.

Mr. Chairman, I now yield to the gentleman from Iowa [Mr. GWYNNE], the author of the bill, 20 minutes.

Mr. GWYNNE of Iowa. Mr. Chairman, following the hearings the subcommittee and later the full committee gave very careful consideration to this entire subject. I mean this general subject of portal-to-portal claims and suits, and also other problems caused by giving retroactive effect to certain rulings and regulations. Growing out of those investigations this bill, H. R. 2157, was recommended.

I believe I can say that this is a committee bill, in every sense of the word. It represents the final majority views of the committee. However, I do not wish to infer that every member is in accord with all the provisions of the bill. There will be some disagreements about certain provisions, and you will hear about those later.

The bill has to do with three acts of Congress.

First, the Fair Labor Standards Act; second, the Walsh-Healey Act, which is the Public Contracts Act; and, third, the Bacon-Davis Act, which is the act regulating the building of buildings in behalf of the Government.

The bill, however, is not an amendment to those acts. It affects certain liability under those acts.

This bill may be divided into two parts. The first part has to do with general claims and actions under those three statutes. You will find that in section 2 of the bill. Section 2 undertakes to prescribe certain limitations, to lay down certain conditions under which action for wages, liquidated damages, attorney's fees, and costs may be brought. The first limitation laid down has to do with the statute of limitations. Under existing law there is no Federal statute of limitations limiting the time within which suits may be brought under any of these acts. This bill would put a limit of 1 year. That is to say, every person must sue his claim within 1 year after the cause of action arose. That applies whether the cause of action arises prior to the effective date of the act or after

the effective date of the act. Of course, when the act becomes law there will undoubtedly be certain causes of action which have already been running more than a year. Those are not cut off, however. All those people have 6 months after the effective date of the act within which to bring their suits.

In the absence of a Federal statute of limitations, the courts, in trying these cases, are required under the Conformity Act to apply any applicable State statute of limitations. So, under those statutes, some actions are now barred. This act makes it clear that any action now barred under State statute is not revived. We have also cleared up a point about which there was some confusion among the courts. That has to do with the question when the statute begins to run as to a person who later joins a representative or class action. In other words, is the statute tolled by the bringing of the action for everyone who later joins in? This bill makes it clear that such is not the case. Every person joining the action can be met by the statute of limitations, and it begins to run at the time he is made a party to the action.

Let me say this to you about the statute of limitations: It purports only to limit the time within which the statutory actions may be brought; that is, for example, under the wage-and-hour law, an employee may sue for minimum wages or for overtime compensation and may recover that amount, plus an equal amount as liquidated damages and attorneys' fees and costs. That is the statutory action. This would limit only the time for beginning of that action; it does not affect his right under common law to bring an action for any wages in the State courts, and be subject there to the usual statute of limitations.

I think the situation is entirely similar to that which exists in cases of mechanics' liens. For example, suppose I buy material for my house from a lumber dealer. He may furnish me the lumber and sue me for the amount involved at any time within the statutory period, which, in my State, is 5 years on oral contracts. It was thought by the legislature that that was not an adequate remedy, so they gave the lumber dealer a special statutory right—just like we gave to employees under the Fair Labor Standards Act. They gave the lumber dealer a mechanics' lien. He could file in the courthouse a statement of the amount due and that became a lien on my property; that gave him great rights over every other creditor, and he could foreclose it in due time. The legislature required—and you will find similar provisions in your own State—that the filing of that lien must be within 90 days and the action to foreclose it must be brought within 1 year.

I point that out simply to indicate that it has been the general policy of legislative bodies when they give a special and drastic statutory remedy to require that that remedy be exercised within a rather short period of time. If the beneficiary thereof does not care to rely upon that particular remedy his right to sue under common law as ordinary people sue ordinary claims is in no way affected.

The next provision has to do with the so-called good-faith provision. One of the great complaints about the operation of the Fair Labor Standards Act has to do with the many conflicting and confusing rulings. The act has been greatly extended, as you know, the coverage of the act has every year been made broader and broader. Just to give you one example, they held, and the Supreme Court held with the Administrator some time ago, that an elevator operator in a building who simply took customers up to the top floor where a company was engaged in manufacturing goods to be sold in interstate commerce, that that elevator man was under the Fair Labor Standards Act. There are literally hundreds of cases that might be cited. The net result has been that many small employers have gone to the person responsible for enforcing the law, have gotten rulings, interpretative bulletins, and have relied on them, only to find that next year the ruling has been changed by the Administrator or that a court decision has changed it.

Regardless of his good faith, the employer finds himself subject to suit, not just for the amount involved but for twice the amount involved, together with attorney's fees and costs. This simply provides that the employer in any such case may plead and prove that what he did was done in good faith and in reliance upon administrative rulings or regulations.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Pennsylvania.

Mr. WALTER. I notice in that section reference to reliance in good faith on any administrative regulations and in the report, page 7, second paragraph, it is provided that the protection extends to all regulations, and so forth, of the executive branch of the Government which affect the liability of the employer under the three statutes set out in section 5. I am wondering whether or not the language in the report is a correct statement of the intention of the committee. I was under the impression that the good faith was to be extended to reliance on orders of the War Labor Board as well as good faith reliance on all orders from any executive branch of the Government.

Mr. GWYNNE of Iowa. That is correct. My understanding is exactly the same as the gentleman's. This good-faith provision extends to any administrative order, regulation, or practice of any department of the executive branch of the Government insofar as it affects liability under these three acts.

Mr. BARDEN. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from North Carolina.

Mr. BARDEN. I would like to clear my mind on that. For instance, if the Wage and Hour Administrator, or one of his deputies, issues a ruling or an interpretation under the act, the employer is allowed to proceed under that without being penalized later when they change their minds?

Mr. GWYNNE of Iowa. That is correct.

Mr. BARDEN. That is the same issue that was fought out here on the floor when the amendments were offered 2 or 3 years ago.

Mr. GWYNNE of Iowa. That is correct.

Mr. BARDEN. And they turned me down on that.

Mr. GWYNNE of Iowa. I hope we have better luck now.

Mr. BARDEN. They turned me down on the 1-year limitation also. I hope they are truly repentant today.

Mr. GWYNNE of Iowa. We should bear in mind that this in no way interferes with the right of any administrator to issue rules and regulations and interpretations as provided by law and to change those rules and regulations. All this provides is that the changes will not operate retrospectively.

Mr. REED of New York. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from New York.

Mr. REED of New York. I have listened to the colloquy between the gentleman from Pennsylvania and the gentleman from Iowa, and I was very much interested. I thought he raised the point that the committee's real intention was not expressed in the report, and whether or not the interpretation that you now place on it is different from that of the report. I would like to know about that because if it comes to a matter of ascertaining the intent of Congress and the court referred to the report, perhaps not looking into the debates, I am wondering where we stand now.

Mr. GWYNNE of Iowa. I think the report sets out very clearly what the gentleman from Pennsylvania [Mr. WALTER] and I have in mind. It says:

The purpose of this provision is to protect the employer against the retroactive effect of changes in administrative regulations, etc. It is not limited to regulations of the Wage and Hour Administration. On the contrary, the protection extends to all regulations, etc., of the executive branch of the Government which affect the liability of the employer in the three statutes set out in section 5.

Mr. REED of New York. Then it is understood that in your colloquy here you did not intend to say that the report did not reflect the intention of the committee?

Mr. WALTER. What I had in mind was clarifying the order feature of the language in the report because, after all, the proceedings are under one of the three statutes; however, wages may be fixed by a Government agency other than the wage-hour, Walsh-Healey, or Bacon-Davis agencies.

Mr. KEEFE. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Wisconsin.

Mr. KEEFE. As illustrative of this situation, the Wage and Hour Administration, as you know, was required to define areas of production under the Fair Labor Standards Act. They issued such a definition under which the employers, especially in the canning business in the agricultural fields, operated. The case went to the Supreme Court of the United

States in which the Supreme Court held that that definition was unconstitutional, and set it aside, and required the Wage and Hour Administrator to issue a new definition of "area of production," something that the Congress refused or failed to. Now, then, under this new definition of area of production, as now defined by the Wage and Hour Administrator, we find that under the decision of the Supreme Court it is retroactive, and an employer who may have been complying with the first definition may now find that he is faced with penalties that have arisen because of this decision of the Supreme Court which makes those penalties retroactive.

Mr. GWYNNE of Iowa. That is correct.

Mr. KEEFE. What I want to know is this: Is it intended, under this good-faith provision which the gentleman discussed on page 7 of the report, that an employer who has in good faith complied with the regulations established by the Wage and Hour Administrator under his then existing definition of area of production, is protected against suits for double damages or treble damages because of the subsequent change by the Supreme Court directing a new area-of-production definition?

Mr. GWYNNE of Iowa. That is correct. That is exactly what we have in mind.

There are two other features in part I of the bill that are quite important. Under existing law this action for double damage under the Wages and Hours Act cannot be settled. We allow settlements to be made, and a settlement will be valid in the absence of fraud or duress. Also under existing law if there has been a violation of the wage-and-hour law or any of these laws, regardless of the good faith of the employer who makes the violation, the court has no discretion other than to assess the amount found due plus an additional amount for liquidated damages. In this bill we provide that the court may assess this liquidated damage only if he finds that the violation of the law was in bad faith and without reasonable grounds, and then he may assess such amount as he thinks is right, but not to exceed the amount fixed in the particular law.

Mr. KARSTEN of Missouri. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Missouri.

Mr. KARSTEN of Missouri. Upon whom is the burden of proof as far as this bad faith is concerned?

Mr. GWYNNE of Iowa. I presume it would be on the plaintiff.

Mr. KARSTEN of Missouri. The employee rather than the employer. It would be a question of having the employee prove the state of mind of the employer; is that correct?

Mr. GWYNNE of Iowa. I do not know that that is it at all. The bill simply says that if the court finds that the employer acted in bad faith then he may assess such sum as he thinks is equitable.

Mr. KARSTEN of Missouri. The burden is on the employee then?

Mr. GWYNNE of Iowa. I would not say it was. It is a question for the court to determine; whoever proves it or dis-

proves it. I do not suppose it makes any great difference.

The second part of the bill has to do with suits for the recovery of compensation in connection with activities which, at the time they were performed, were not considered compensable either by express agreement or by implied agreement, based on custom or practice—portal-to-portal, so to speak.

The portal-to-portal situation is simply this: The wage-and-hour law, the Walsh-Healey Act, and others, do not contain any definition of "worktime" or "workweek." Those acts do not say what activities are compensable. It was the general understanding, I believe, when the laws were passed, that that would be settled by agreement between the parties either expressly or by custom and practice which necessarily would enter into the minds of the contracting parties.

In the Mount Clemens case the Supreme Court considered whether or not certain walking time from the gate to the work station or time used in certain preliminary activities, changing clothing, and so forth, was compensable under the wage-hour law. The court held that it was compensable time and was covered by the Wages and Hours Act, even though the parties themselves may have expressly agreed that it was not compensable.

We set out in the report exactly what that would mean in practical figures. Take a person working at a basic rate of 70 cents an hour and putting in 30 minutes every day in these preliminary activities. If he worked 5 days a week and 50 weeks a year for a period of 4 years, he would be entitled to recover from his employer over \$1,000 with attorney fees and costs. You can multiply that figure by the number of employees in the plant and apply those calculations to all the employees under the wage-hour law and see what it means to the economy of the country.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. MICHENER. Mr. Chairman, I yield five additional minutes to the gentleman from Iowa.

Mr. GWYNNE of Iowa. We move in on that problem very directly. Section 3 provides that the courts, Federal and State, have no jurisdiction to entertain suits of that character. It is as simple as that.

This brings me to a question I had better touch on before my time expires, the question of constitutionality. The ex post facto provision of the Constitution prohibits the making of any criminal statute retroactive under any circumstances. There is, however, no similar provision in regard to civil legislation. That does not mean that the Congress is without limitation in the matter, quite the contrary. We are limited by the fifth amendment, which states that no person's property shall be taken from him without due process of law.

What does "property" mean? The court has held that "property" was used in that amendment in the same sense you and I ordinarily use it. It means tangible, definite property. It does not mean some inchoate right that you have



not reduced to possession. It does not mean some fish in the river you have not yet caught. It does not mean some judgment under a statutory right that you might recover but have not yet recovered.

What is this right of the employee to recover time and a half for overtime? Is it based on the common law? Certainly not. Is it based on contract? Certainly not. It is based entirely on a statute of the Congress. The Congress in the exercise of a great public policy said, "We believe it to be in the national interest that any person who works more than a certain number of hours a week should be paid time and a half of the basic rate for that time." It is purely a statutory right, and the courts have held that all those statutory rights that are given by Congress may be taken away by the Congress at any time until they have ripened into a judgment from which further appeal may not be taken.

I can make that very clear if I give you an illustration or two. Prior to 1850 Congress passed a law which provided that any person who aided in the escape of a fugitive slave could be sued by the master and a \$500 penalty collected from him. A man named Norris brought such a suit against a man named Crocker. He proved all these facts and was entitled to recover.

While the case was pending, the Congress amended the law and took away that penalty. The Supreme Court held, in substance, that Congress simply had pulled the rug out from under Mr. Norris.

We did the same thing in the informer statute.

We did the same thing in connection with the insurance bill. You remember in the Southeastern Underwriters case, the Supreme Court held that the business of insurance was interstate commerce, thereby reversing decisions of 75 years' standing. The net result of that was that the insurance companies of the land were immediately made liable to suit for treble damages under the antitrust laws, and chaos faced the insurance companies as well as the country at large. The Congress moved in and passed Public Law No. 15, of the Seventy-ninth Congress, which provided that these suits could not be maintained until January 1 of next year, at which time it was thought that other legislation will take care of the matter.

Somebody may say, "You are wrong in your major premise. You are going on the theory—which I am—that this right to recover overtime is purely a statutory right coming under the decisions which are cited." Let us assume it is not a statutory right but that it is a private right and, therefore, does not come under these decisions. Let us assume that and proceed from there. Some years ago a man named Norman bought from the B. & O. Railroad a gold bond. He paid his money and received the bond, which entitled him to recover the face value thereof in gold of a certain weight and fineness. That was not a statutory right, was it? That was clearly a private right which he had bargained for. That was property in any man's language, and no court would hold

other than that that was a property right such as was meant to be protected by the fifth amendment. In the meantime, the Congress stepped in and passed the well-known gold law. When this man brought suit against the B. & O. Railroad to recover in accordance with the provisions of the bond, he was met by that statute which made it impossible for the railroad to pay the bond in gold of the agreed weight and fineness. The Court held, in substance, that every contract right in the country is subject to the paramount duty of the Congress to regulate interstate commerce and to perform the other great duties which it must perform for the country. That was the case of *Norman v. The B. & O. Railroad* (294 U. S. 240).

There are many other cases I could cite but I will not take up your time further.

The due-process clause is one of the great basic principles of government, and we have relied on it many times. For instance, a great depression comes along. Courts always held that a man was entitled to sue on his mortgage bond if the defendant does not pay the interest. According to the decisions of the courts, that creditor is entitled to his pound of flesh even though it carries with it the blood of the unfortunate debtor who cannot pay. That is what the courts have held. But during the depression the State legislatures stepped in there and stayed the hands of the courts. The action of the State legislatures was upheld under the due-process clause. We do the same thing in time of war when all the young men who produce food and clothing for the people are out on the battlefield. Here is a man at home who has bought a lot of food and clothing. He says, "It is mine. I will charge what I please." The Congress says, "You will not. We will recognize the right of the public as superior to any contract right you have." Putting it briefly, that is the due-process clause. You may cite cases by the hour and all you would conclude finally is that it is a basic principle of law which is rooted deep in the great fundamentals of common sense, justice, and fair play.

This due-process clause has often been applied to protect the few against the many, but it is just as powerful to protect the many against the few, as we are doing in this case.

Mr. Chairman, the due-process clause is a shelter for the helpless in the time of their emergency. It is not a sword for the unrighteous in the day of their aggression.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama [Mr. HOBBS].

Mr. HOBBS. Mr. Chairman, you have just listened to one of the major prophets of the law in this Congress, and I think you have listened to an exposé of the law with reference to the pending bill as succinctly put as any man could have done. We in our committee regard the gentleman from Iowa, JOHN GWYNNE, as one of the soundest and best lawyers in this House. We believe that he and the subcommittee over which he so ably presides have done as fine a job with this bill as could be done with the approach

they used. My hat is off to them. I am for the bill very cordially. I think that an amendment which I will propose would be helpful to the bill and helpful to the cause. I understand that the Parliamentarian will, as the distinguished chairman of the Judiciary Committee did in our committee, rule my amendment out of order. I have no hard feeling, and bow respectfully, as I must.

My proposal of that amendment was simply because I believe profoundly that it goes to the root of the trouble and is the best possible approach. I know it is being ruled out of order because the Congress, as I see it, is following the practice of the jurisdictional strike, which I abhor. The reason the point of order was sustained, and will again be sustained, is because jurisdiction over the so-called Fair Labor Standards Act of 1938 is in the Labor Committee rather than the Judiciary Committee. That may or may not be true, but we are representatives of the people of America. What we are trying to do is to do a thorough, workmanlike job for the people of America against pending and threatened evils that jeopardize our economy nationally. No matter who does the job, I submit, it ought to be done. The proper approach in all such matters is to do what needs to be done, well, thoroughly, and immediately. When you have a cancer, medical science has convinced the surgeons who know their business that the way to cure it is to excise it entirely. They cut it out wholly, root and branch. We are dealing here with a cancer. We may treat it otherwise, no matter how skillfully, but if we spare the knife the patient may die.

Every single pillow-to-pillow or portal-to-portal claim arises out of these three sections of the Wage and Hour bill. The manly, the right, the direct, the skillful, and the only safe approach is for Congress to repeal those three sections from which all our trouble flows. Then either in the same act, this act, or some separate act, whichever may be preferable, we can reenact those three sections suitably revised and safeguarded.

I believe that this bill with the repeal of sections 6, 7, and 16 (b) of the Wage and Hour bill will be a better bill than it is now. It is good now, but I have no fear that with the repeal of those three sections it will be a better bill and one which is more bombproof. So I submit with the highest respect for the subcommittee, for its able leader, the gentleman from Iowa, JOHN GWYNNE, and for the great committee which has brought this bill to the floor, that we ought to do the whole job that needs doing, and kill what may otherwise kill the economic life of the Nation.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. CELLER. Mr. Chairman, I yield myself 10 minutes.

The CHAIRMAN. The gentleman from New York is recognized for 10 minutes.

Mr. CELLER. Mr. Chairman, I speak for the members on the Judiciary Committee who signed the principal minority report. It is always difficult to swim

against the tide, and I fear that in making my remarks this afternoon I will be swimming against the tide; I feel intense currents of opposition; but somebody has to bring these facts out, and I willingly do so.

The gentleman from Michigan, the distinguished chairman of the Judiciary Committee, said that the American people were interested in this bill. I want to remind my distinguished chairman, for whom I have the highest regard, that the working men and women of this country who, with the members of their families, very likely constitute over 100,000,000 of the population of the land, are vitally concerned with this bill. That number of people is a pretty good chunk of the American people.

Mr. MICHENER. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield.

Mr. MICHENER. The gentleman is going on the false assumption that all of those people favor these portal-to-portal suits.

Mr. CELLER. I wish the gentleman would let me finish. I did not say that. I will say that those workmen and their loved ones are very much interested in this bill and they are very much concerned that under the guise of blacking out or blocking out some unwarranted so-called portal-to-portal suits we are attacking and emasculating the Fair Labor Standards Act; and surely those working men and women are very much interested to see that the Fair Labor Standards Act is not destroyed even piecemeal.

As the gentleman from Alabama [Mr. HOBBS] said, he would like to cut out the "cancer" in its entirety, meaning the Fair Labor Standards Act. Should his suggested amendments prevail, the very guts of the act would be taken out and there would be no Fair Labor Standards Act. He spoke truly when he said that we are doing this thing piecemeal, this destruction of the Fair Labor Standards Act. So what I say finds favorable lodgment and is reechoed in the mind of the gentleman from Alabama. There has been a great deal of hysteria about these portal-to-portal claims. Some of those cases are good and some of those cases are bad. I am sure the distinguished author of the bill, the gentleman from Iowa, will agree to that. He did say in committee that he wanted to protect the good cases, but, again, this bill would at least throw a shadow across all the good claims if it would not preclude and proscribe them.

The adding machines have been taken out by some commentators and some of the publicists appearing for newspapers and they give a staggering figure as to the amount of these portal-to-portal claims. The figures are greatly exaggerated. What is claimed in a suit and what is recovered are entirely two different matters. In a lawsuit lawyers for plaintiffs usually balloon the claims. I admit willingly that many of these suits are utterly unwarranted and should never have been brought by the representatives of labor. Those who instituted some of the cases have done labor a disservice. But much of the hubbub is unwarranted. There are many good

claims and we must protect those good claims. The bill does the opposite.

There is nothing new about portal-to-portal claims, although we are told that it is a novel situation; that we have never had portal-to-portal claims heretofore. Look at the interpretative bulletins of the Wage and Hour Division and you will see that Mr. Metcalfe Walling away back in 1939 warned management that they would have to pay for this type of work. I read from his testimony given before the subcommittee of the Judiciary Committee, page 245. Mr. Metcalfe Walling, a very distinguished administrator, states:

I make no claim that I anticipated the situation created by the Mount Clemens case specifically, but I have made it clear on repeated occasions that I was seriously concerned about the possibility of retroactive liability growing out of a fundamental defect in the act.

That fundamental defect, he said, was his inability to make any administrative regulations. We deprived him of the right to make rules and regulations. May I say, Mr. Chairman, if we had given to the Administrator of the Wages and Hours Act the power to make rules and regulations, and therefore to define a workday or a workweek, or a productive day or a productive week, we would not have been bothered by all these portal-to-portal claims. He could have readily and timely settled all of them.

Mr. MICHENER. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Michigan.

Mr. MICHENER. Was it the purpose of the Congress in not doing the thing the gentleman states, that employers' employees could under the Collective Bargaining Act settle their own disputes, bargain, and collect, and if they have done that they have acted in good faith; but because some misguided court makes a mistake as to what Congress intended and the people intended who entered into the bargain, we find ourselves in this emergency?

Mr. CELLER. The observation made by the distinguished chairman of the Judiciary Committee is in part sound, but it does not go far enough. Surely that is the situation with organized labor. But how many organized men are there in this land? Fourteen million. But what of the forty or fifty million unorganized men? The situation that the gentleman adverted to does not apply to unorganized labor, and we must be interested in unorganized labor as well as organized labor. The unorganized workers cannot collectively bargain. It is the unorganized man who does not know his rights. He has not got the pipe line of intelligence to the counsel of the union who can tell him adequately what his rights are. But the vast army of unorganized labor, forty or fifty million—I do not know the exact number—does not have the advantages that the union can give its men. When we adopted the Fair Labor Standards Act, we adopted it not only for union labor but for non-union labor as well, and particularly for the nonunion workingmen.

Again, to supplement the statement I made that there is nothing new with ref-

erence to these portal-to-portal claims, the contrary notwithstanding, as the editorials and the commentators would have it, I call attention to the Tennessee Coal & Iron case, decided in 1944, which, in part, reads as follows—the Supreme Court speaking:

We are not here dealing with mere chattels or articles of trade, but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profits of others. Those are the rights that Congress has specifically legislated to protect.

And, again, further down in the opinion:

It is vital, of course, to determine first the extent of the actual workweek. Only after this is done can the minimum-wage and maximum-hour requirements of the act be effectively applied. And in the absence of a contrary legislative expression, we cannot assume that Congress here was referring to work or employment other than those words are commonly used \* \* \* as meaning physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.

Now, that was fair notice to all the employers. I am sure that you will agree with me that all employers are not lily white. There are some who cut corners and, to use words of common parlance, there are many chiselers, and it is because of those chiselers that we must be very careful, and I fear we are not careful in this legislation when we seek to offer amendments to the Fair Labor Standards Act.

Now, it has been the practice in many unions to recognize portal-to-portal claims. I had this to say in the minority report, and you will forgive me for repeating it:

A wide variety of activities which employers have always compensated, not unlike the portal-to-portal claims, occur in the building trades, longshoring, petroleum, newspaper editorial and photographic work. In the American Federation of Labor unions, time spent in traveling from designated bases to the work site, by collective bargaining, is considered worktime and paid for. In carpenters' agreements, tool sharpening is considered worktime during working hours and paid for. In street and bus transportation, getting the car ready for servicing and returning it to the barn is considered time worked and paid for.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CELLER. Mr. Chairman, I yield myself five additional minutes.

This is in organized labor. That time is paid for. But that time is not paid for when it concerns the unorganized working men and women of the United States.

Judge Picard, who has been maligned up and down the Nation, and who was sought to be impeached—I think it was by a Member of this body—has rendered another decision, a second decision, which says where the time expended is of little consequence, is ineffectual and of very short duration, applying the so-called de minimis rule, suit should not be brought and is of no value, and he threw the case out of court, and I wager that thousands upon thousands of cases brought will be thrown out of court by virtue of Judge Picard's second decision.



Now I come to a provision of the Gwynne bill which to my mind is most obnoxious, and that is the limitation of 1 year as a statute of limitations. All past claims have applied to them a limitation of 6 months. But when it comes to future claims, I have many objections to the statute of limitation of 1 year. To my mind that is a rank discrimination against the working man.

In my State of New York a businessman has 6 years within which to bring a money claim against anybody. If a workman borrows money from him, the employer can wait 6 years before he brings action for recovery of the loan against the employee. Many of our Federal statutes have more than 3 years, at least more than 2 years, in which actions may be brought. Under present law a suit for a penalty of forfeiture operates under a 5-year statute of limitations. A suit under the Federal Employers' Liability Act operates under a statute of limitations which was originally 2 years but that was found to be inadequate and the Congress changed it to 3 years. A suit for infringement of patent rights operates under a 6-year statute of limitations. Suits under the Trust Indentures Act of 1939 and the Perishable Commodities Act operate under a 3-year statute of limitations.

We passed a bill similar to the Gwynne bill in the last Congress. We did not say in that bill that the statute of limitations was to be 1 year, we said it was to be 2 years, and over in the other Chamber they lifted it to 3 years. The bill died finally because of the abrupt ending of Congress.

I should like to warn the businessmen and warn management that if Congress can take away the rights of labor by limiting their claims to 1 year, then let businessmen beware. There is here established a very solemn and serious precedent, and similar rights may be filched from businessmen and management in the future.

Let us see what the statutes are in the various States concerning claims for compensation. In Arkansas it is 5 years; California, 3 years; Illinois, 5 years; Indiana, 6 years; Nebraska, 4 years; Nevada, 6 years; New Hampshire, 6 years; New Jersey, 6 years; New Mexico, 4 years; New York, 6 years; North Carolina, 3 years; Ohio, 3 years; and Oklahoma, 3 years. Where in several States the statute was made 1 year or 6 months, the courts declared the statutes unconstitutional as setting entirely too short a period of time within which a claim could be brought.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CELLER. Mr. Chairman, I yield myself five additional minutes.

Mr. VORYS. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Ohio.

Mr. VORYS. Would the gentleman claim that any of these statutes of limitation on bringing actions for wages are repealed or amended by this law, which merely applies to the special double damages and other features provided in the Federal laws?

Mr. CELLER. I am only instancing these particular State statutes to show that there is far more wisdom in the States with reference to statutes of limitation than there is in this Congress if we pass a 1-year statute of limitations. Also if we pass the bill it would control the time in the various States within which a suit for wages can be brought.

Mr. VORYS. I asked for information. Is it not true that even if the Gwynne bill were passed in its present form an employee would still have a right for an action for work performed?

Mr. CELLER. No. This law would be paramount to State statutes, and it would be only 1 year. In the various States I indicated, where there are 5- and 6-year limitations, the time would be whittled down to 1 year if we passed this bill.

Mr. VORYS. Can the employee recover for any work for which his employer agreed to pay him under the longer statute of limitations? I think that is obviously the case.

Mr. CELLER. If the claim is brought under the Bacon-Davis Act or under the Walsh-Healey Act, or under the Fair Labor Standards Act, if we pass this bill which is applicable to all three acts, there is only 1 year in which the claim can be brought in court.

Mr. VORYS. That is perfectly true, but the man would still have his right under the common law to recover if the employer agreed to pay him.

Mr. CELLER. Yes. That is under common law but not if he bases his claim on the right that we accorded him under the Fair Labor Standards Act.

Mr. ROBSION. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Kentucky, my very distinguished colleague on the committee.

Mr. ROBSION. The gentleman speaks of the statute of limitations with reference to the question of wages and so forth. The statutes to which the gentleman has referred do not carry with them this penalty as provided in the Federal Wages and Hours Act.

Mr. CELLER. That is correct; but we are taking away the liquidated damages.

Mr. ROBSION. I agree with the gentleman from Ohio that the limitation would not apply to the cases where the claim is just for wages, but with reference to double damages, that is an unusual weapon or privilege granted to the worker.

Mr. CELLER. But may I remind the gentleman that he forgets that if we pass this act as it is worded now we practically take away the so-called liquidated damages, which is the incentive for an employer to abide by the law. If we pass this law, we say that the employee cannot bring his action for anything other than the amount of the wages that the employer had to pay in the first instance, unless the employer was guilty of bad faith. We take away the right of the employee to sue for what is known in the act as liquidated damages, which is 100 percent of the amount of wages due unless there is bad faith. If we take that right away, we take away from him the right to sue for liquidated damages and

the right to sue for the penalty. Then what happens? If a man violates a law, all he will be responsible for, despite his violation, is the amount of wages he would have had to pay in the first instance. What kind of penalty do you have then? What kind of incentive is there in the act so that the law will be obeyed? Remember, also, that the public, in addition to the employee, is interested in the matter of liquidated damages.

Mr. VORYS. The criminal penalty is still in the law; is that not true?

Mr. CELLER. But the criminal penalty is greatly changed by this act because even in the case of bad faith the court is not compelled to impose the full penalty but has discretion in the imposition of the penalty. Therefore, upon a showing of good faith, all the employer is obliged to pay is the amount which he was obligated to pay in the first instance. Therefore, there would be an incentive to violate the law instead of obeying it, and an employer could do all in his power to prevent giving an adequate wage to an employee for 1 year, and if he was successful in doing so for 1 year, then the employee is out of luck.

Mr. ROBSION. May I remind my friend the gentleman from New York that there is not a line in this bill which wipes out the liquidated-damages provision. It merely provides for changing this provision of liquidated damages or civil penalty to the extent that it gives the court discretion not to allow no sum at all but to allow an amount according to the proof.

Mr. CELLER. Oh, no. I must respectfully differ with the gentleman. There is no provision providing for the collection of liquidated damages unless there is bad faith, and in good-faith cases liquidated damages go out the window.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. WALTER. Where in the act is the liquidated-damage provision of the Fair Labor Standards Act eliminated?

Mr. CELLER. On page 5, subsection (g), which provides that in cases where the action of the employer was "in bad faith and without reasonable ground," and then the court may award the penalty up to the limit of 100 percent of the wage—that is, up to full liquidated damages in its discretion.

Again, I am interested in the non-organized workers. A worker would be very fearsome of bringing in a claim for any action, especially if he is not in a union, because there would be fear and trepidation that he might lose his job. We must help in every way the worker—especially the unorganized worker. He is not inclined to make any claim, but even if he is inclined to make a claim, and he does make a claim, no matter how violative of the law the employer may be, the employer can compromise any claim; he can stick under the nose of an unsuspecting employee a waiver or release and shove into his hand a \$10 bill, and then there is compromised a claim for perhaps several hundred dollars. I do not think that is the American

way, and that is why I must oppose this bill.

Now, beyond that, take this 1-year statute of limitations: The testimony showed there were 550,000 establishments in this country subject to investigation by the Wage and Hour Division. Mr. Walling testified that with his staff he could only conduct 50,000 investigations. Therefore, it would take over 10 years to complete the investigations of these various establishments who operate under the Fair Labor Standards Act. Yet the poor devil, who is not a member of the union, who does not know his rights, must rely upon the investigation of the Wage and Hour Division and he may have to wait for 10 years before he will know his rights. By that time he is confronted with a fait accompli: this 1-year statute of limitations will have operated against him.

Mr. ROBSION. Mr. Chairman, will the gentleman yield for one other question?

Mr. CELLER. I yield.

Mr. ROBSION. Does the gentleman object to a worker having the right to settle his claim?

Mr. CELLER. I think that the worker should be permitted to consult the Wage and Hour Division, the various regional offices, to determine what his right is. I think the Wage and Hour Division, particularly with reference to unorganized workers, should first have some say in the matter. For that reason I hope that we can amend the bill to permit the Wage and Hour Division to determine, by regulation, what is productive work, what is a workweek, and what is a workday.

An employer can absolve himself completely if he claims he relied on any "administrative regulation, order, ruling," and even "enforcement policy or practice."

There is no limitation to rulings or interpretations of the Administrator. Any minor regional official can make any ruling that will absolve the corner-cutting employer.

A complete defense is not only reliance upon administrative opinion, ruling, interpretation, regulation, or order, but also even something called "enforcement policy or practice." Frequently an enforcement policy may include a decision not to act in certain cases only because of lack of funds or because it is decided that other cases are more important and more urgent.

Rights of workmen are thus dependent on rather vague formulas.

It were better to give the Administrator power to make rules and regulations—a power which we withheld. Such power would enable the Administrator to make rules defining "workday," "workweek," "production work," "compensation for work," and so forth. That power heretofore granted would have been done away with the so-called portal-to-portal suits.

The employer can, under the bill, compromise and settle any claim. Thus an employer may pay his employee 30 cents an hour instead of the legal rate of 40 cents and then free himself from liability for his law violation simply by secur-

ing from the underpaid employee a signature on a waiver or release.

Also liquidated damages can only be recovered if bad faith is shown. The bill says in effect that double damages can only be recovered by proving something that is quite difficult if not impossible—bad faith—the operation of the employer's mind. Yet even the product of the employer's bad faith the proposed bill would permit the employee to compromise away. Compensation may be barred by custom or practice. And it is not custom or practice in the industry but in the particular establishment. Practices in different plants within the industry may differ. Thus wages may differ in different places. That may be noncompetitive conditions.

What is practice, especially in a new plant or new industry? It would take more than 1 year—the statute of limitations is 1 year—to know what the custom and practice in a new plant is. But by that time the claim for overtime pay is foreclosed.

The CHAIRMAN. The time of the gentleman from New York [Mr. CELLER] has again expired.

Mr. CELLER. Mr. Chairman, I yield 10 minutes to the gentleman from Pennsylvania [Mr. WALTER].

Mr. WALTER. Mr. Chairman, of course, in the consideration of a measure of this sort, sometimes people, accidentally or otherwise, get away from the legislation under consideration.

This bill does not do any of the things that either the gentleman from New York [Mr. CELLER] or the gentleman from Illinois [Mr. SABATH] were so apprehensive about in their statements. You must bear in mind that when the attention of the country was focused on the so-called portal-to-portal suits it was the opinion of everyone that there were things in the wage-and-hour law, in the Walsh-Healey Act, and in the Bacon-Davis Act that required clarification so that the chaotic condition that our Government, courts, employers, and our labor unions found themselves in could not be continued for long.

This bill does not whittle away one single right of the workers under the wage-and-hour law. I say to you if it did I would not be in the well of this House urging that this bill be enacted. After all, when the wage-and-hour law was written, it was written to protect the health, efficiency, and general well-being of workers who are engaged in those activities which are considered to be interstate commerce. The statute affects about 21,000,000 workers, of which number approximately 12,000,000 are unorganized.

These 12,000,000 workers should be given even greater protection than they now have from those unscrupulous employers that very few of us know very much about. Unfortunately, when we consider legislation of this sort, we think of the reputable employer, we think of the man who is today confronted with claims for something he never anticipated he would be obliged to defend against, and we lose sight of those people who would destroy the reputable businessman and get into his markets

through the cutting of corners. There is nothing in this bill, as I said before, that affects that class of employers, that I think we should continue to protect to the best of our ability.

What have we done that affects the wage-hour law? We have provided that where an employer acts in good faith and does that which in his judgment he has a right to do by virtue of established custom not in violation of the law, or by virtue of a decision of a court in an action in which he was a party, or by virtue of a ruling by an administrative agency, he has a valid defense, which, of course, must be established as is any defense, when a suit is brought under the statutes set out in section 5 of the bill, and in that instance only. Even the very capable Administrator of the wage-and-hour law, Mr. Walling, urged that settlement of claims should be allowed. Bear this in mind, that under existing law, under section 16 (b) of the wage-hour law, the court has absolutely no discretion whatsoever in the imposition of a penalty when there has been a violation, whether willful or otherwise. If the court finds that an employee is entitled to compensation for minimum wages or for overtime employment, then it is mandatory on the court to impose the penalty. In many cases the courts have stated that they would like, if possible, to relieve the employer of a penalty for something that he did innocently and not deliberately, but are powerless to do anything but impose a penalty as liquidated damages in an amount equal to the amount recovered for unpaid minimum wages or overtime compensation.

We have provided in this bill that where there is a violation then the court has jurisdiction to impose whatever penalty he sees fit to impose up to double the amount of the claim. I cannot imagine a court anywhere in this land that would not impose the full penalty prescribed under the statute in a case of willful violation of the law.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield.

Mr. CELLER. Does the gentleman think it fair to have the employer rely upon the administrative ruling or interpretation of law by anyone, say, of the lesser echelons of the Wage and Hour Division, some insignificant servant or employee?

Mr. WALTER. It seems to me, I may say to the gentleman from New York, in that regard, that the usual rules of the law of agency should prevail, and that where a person is apparently clothed with the indicia of authority to speak for his employer, in this instance the agency, then it seems to me that the person who receives his interpretation from such a person ought to have the right to rely on it. Certainly if he calls some minor official or writes a letter to a minor official, if the minor official has the right to reply to such letter it ought not to be construed as bad faith to rely on it.

Mr. CELLER. Mr. Chairman, will the gentleman yield further?

Mr. WALTER. I yield.

Mr. CELLER. There is nothing in the act which puts that limitation upon the



ruling; it can be any administrative ruling, or order, or interpretation by anybody in the service.

Mr. WALTER. But the record discloses that the rulings are made by the Administrator—and this is Mr. Walling's testimony—the rulings are either made by him or made by somebody to whom he had delegated the authority to make the rulings. I cannot imagine the important queries we have in mind ever reaching the desk of anyone without the authority to act thereon.

Now, that is the substance of the testimony as disclosed by the record. The thing that appealed to the members of the subcommittee charged with the responsibility of considering this problem was the language of the wage-hour law which ties the hands of the court in the imposition of the penalty in all cases.

Mr. MILLER of Connecticut. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield to the gentleman from Connecticut.

Mr. MILLER of Connecticut. As a layman, I cannot quite understand the language in section 3, particularly the words "either by custom or practice." Would that mean that if the custom or practice is admittedly bad or in error that would be a defense?

Mr. WALTER. I was about to come to that. That phase of the problem as contained in section 3 of the bill caused our committee a great deal of trouble. What is custom and practice? What is the custom and practice in determining what the employer has a right to compel his employees to do? You will notice that that language applies to activities that are heretofore or hereafter engaged in. As to activities heretofore engaged in there can be little question; however, as to what is a custom or practice in a new business will cause difficulty. Bearing in mind the fact there are about 55,000 new employers a year, of course we can foresee difficulty. But custom and practice in that connection means a custom and practice not in violation of the law. Certainly no employer could, for example, compel an employee to get to his place of business an hour before he punches the clock and because he had done that for a while relieve himself of his responsibility to comply with the law by saying, "That is the custom and practice of my business." No court would uphold any arrangement of that sort. Certainly that is work under any of the definitions of the courts and we have to rely on a common-sense interpretation of that language.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield to the gentleman from California.

Mr. HOLIFIELD. Would not the effect of that particular section also make the agents in collective bargaining a little more careful in writing the terms and conditions of their employment?

Mr. WALTER. Of course, it would be notice to the employer and the collective-bargaining representatives of the employees that their contract ought to be very explicit. But I am not thinking of that kind of a situation because where there is a strong labor union certainly the employee is protected against the

vicious practices which some of us know about and the kind of practices that were heard described in the testimony adduced at many hearings before various committees of both the House and Senate. No employer can establish as a practice activities for which an employee should be compensated. That would clearly be in violation of the law. As to that language, I am certain that while there may be some confusion for the moment there is not going to be any great difficulty in proving what is de minimus and what is a genuine claim for compensation under the law, and I cannot foresee any employee being imposed upon because of this provision. However, with the 1-year limitation written in the act, there will be a strong temptation on the part of chiselers to take a chance. There is no reason for such a short period of limitation, and I am sure that something more reasonable will be provided before this legislation becomes a law.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. MICHENER. Mr. Chairman, I yield to the gentleman from Massachusetts [Mr. GOODWIN], a member of the subcommittee considering the bill, 10 minutes.

Mr. GOODWIN. Mr. Chairman, I want to amplify the suggestion made a few moments ago by the distinguished gentleman from Alabama [Mr. HOBBS] when he paid a very well-deserved compliment to the able and distinguished chairman of our subcommittee, the gentleman from Iowa [Mr. GWYNNE]. In my opinion, we owe a debt of gratitude to the gentleman from Iowa for the ability and the industry which he has displayed in the matter of this legislation. His masterful presentation of the issue early in this debate is entirely in line with the industry he has displayed throughout the consideration of this matter, and in my opinion his contribution is little less than monumental, and I say this without derogating at all from the credit which is due the distinguished chairman of the Committee on the Judiciary, the gentleman from Michigan [Mr. MICHENER], and the other members of the subcommittee and of the full committee. Something has been said in debate, and more will be said, undoubtedly, to the effect that here is danger that we may magnify and overemphasize the issue before us, and I think we ought to make very certain that we do not minimize the urgency of the situation.

The need for the legislation now being considered becomes dramatically apparent from the avalanche of so-called portal-to-portal pay suits which have been filed following the decision of the Supreme Court in the Mount Clemens Pottery Co. case in which it was held that certain incidental activities of employees are compensable under the wage-hour law.

These incidental or preliminary activities now declared compensable under the Fair Labor Standards Act are not defined in that law. Everybody, the Congress, the employer, and employee have apparently always assumed that that was something which was to be settled be-

tween the employer and employee either by agreement, express or implied, or by custom or practice in the locality or in the industry.

The Mount Clemens decision has opened the flood-gates to an epidemic of suits based upon claims allegedly valid under this new and unexpected formula.

It is estimated that nearly 1,000 companies have been sued and that the claims may be in excess of \$6,000,000,000. In some cases claims have been filed for an amount greater than the working capital or net worth of the company. In very many cases if pending suits were upheld, bankruptcy and ruin would be inevitable.

Industry faces a situation little short of chaotic. Credit is impaired and the necessity for preparation for defense of the suits interferes with the normal process of production. If the suits are successful operating capital might be wiped out.

The confusion and uncertainty creates a serious hazard to our economic system which is all the more unfortunate at this particular period of national recovery when full speed ahead in production is so urgently needed throughout every segment of industry and business.

If industry must pay for these dead horses in the shape of back pay that was never contemplated or considered, then with an increase in costs, with no more goods provided, it will mean higher prices and the consumer must in the end pay the bill.

In the light of uncertainty as to what may happen as the result of suits which may be brought, it is certain that we shall see a slowing down of production. Business will naturally cancel plans for expansion and jobs. Thus everybody is affected, the businessman, the investor, the wage earner, the consumer, and the taxpayer.

Also aside from the portal-pay issue, it appears likely that future demands for liquidated damages penalties and other claims which may be made against employers, even though acting in good faith, might equal or even exceed the actual portal-to-portal pay claims because of the retroactive effect of the new ruling.

We face still another economic danger. It seems probable that those concerns which are least likely to weather the storm let loose by the court decision are the smaller and weaker companies. Thus is fostered the possibility of further concentration of economic power in the hands of those few larger and stronger concerns whose greater facilities for procuring extended credit in time of financial stress may enable them to survive.

The Government, and that means the taxpayers, has a tremendous stake in our attempted solution of the problem imposed by this portal-pay issue. I think I can do no better than quote from our report, on page 4:

The amounts paid by employers having cost-plus-fixed-fee contracts, together with litigation expenses, are all chargeable against the Government. The Comptroller General has so decided. There will also be a loss of revenue through deductions and refunds in taxes.

Cost-plus-a-fixed-fee contracts in the War Department during the period 1941 to 1946 totaled between forty and forty-five billion dollars. As of February 14, 1947, claims had been asserted under these contracts of about \$600,000,000. It was estimated by Under Secretary Kenneth C. Royall at the hearings that the maximum potential liability could go as high as \$1,400,000,000.

Attention was also called to the fact that during the period 1941 to 1946 the War Department also awarded approximately \$100,000,000,000 in lump-sum contracts. While the Government would not have the same legal liability as attaches in the cost-plus-fixed-fee type of contract, nevertheless there might be a moral obligation, the discharge of which would add another huge amount.

There might also be an additional, although apparently limited loss, in connection with renegotiation proceedings.

As of February 5, 1947, the Maritime Commission had received notification from 18 contractors of the filing of portal-to-portal suits against them. In five of the suits the amount claimed was \$128,500,000. The witness for the Commission estimated the additional liability as between \$50,000,000 and \$150,000,000.

"The greatest potential liability would undoubtedly arise under the ship-construction contracts. To a lesser extent, liability will presumably arise under ship-repair contracts, stevedoring contracts, terminal contracts, and miscellaneous contracts of a cost-plus-a-fixed-fee nature."

The Honorable W. John Kenney, Assistant Secretary of the Navy, pointed out in his statement to the committee the effect of the portal-to-portal pay problem of the Navy Department. He said:

"There are four fields in which the Navy has an interest. First, cost-plus-fixed-fee contracts; second, fixed-price contracts containing provision for escalation in price by reason of increased labor costs; third, terminated fixed-price contracts; and, fourth, renegotiation."

Mr. Kenney estimated a potential liability in cost-plus-fixed-fee contracts of \$720,000,000. In the field of fixed-price contracts with escalation clauses he declined to make an estimate but said the liability "will probably be substantial, as the great bulk of contracting done by the Navy Department during the war was on a fixed-price basis, and many contracts contained escalation clauses of this character." In regard to terminated fixed contracts and renegotiation, there was also the possibility of liability but apparently in smaller amounts.

Witnesses for the Government departments called attention to the serious administrative burden placed upon the departments, whether or not these suits are successful, in maintaining such controls and review as is necessary to safeguard the best interests of the Government, and it was admitted before the committee that the expense involved here would be tremendous.

Mr. Chairman, with all this outstanding liability against the Government, with a possibility of millions and millions of dollars having to be paid back in taxes to the companies that have suits filed against them, I think it is safe to say that unless and until this Congress is able to find some solution to this portal-pay threat as it exists today, it is absolutely useless for this Congress even to consider any reduction in income taxes.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. MICHENER. Mr. Chairman, I yield the gentleman five additional minutes.

Mr. RIZLEY. Mr. Chairman, will the gentleman yield?

Mr. GOODWIN. I yield to the able gentleman from Oklahoma.

Mr. RIZLEY. Subsection (f) of section 2, which is at the bottom of page 4 and continues on page 5, disturbs me a little bit. It is provided in that section that—

Any claim, cause of action, or action may be comprised, adjusted, settled, or released, in whole or in part, either before or after commencing such action by the person entitled to bring such action, and any such compromise, adjustment, settlement, or release according to the terms thereof, and in the absence of fraud or duress, shall be a complete satisfaction of such claim.

In view of what the gentleman has just said, does he believe that the phrase "in the absence of fraud or duress" is sufficient to protect the Government against settlements that might be made? In other words, I can see where an employer and an employee might get together and make a settlement which would contemplate, of course, ultimately that where a contract on a fixed-fee basis had been readjudicated or otherwise compromised, they would go back to the Government for that amount of money. Does the gentleman believe that provision is sufficient to protect the Government in such a case?

Mr. GOODWIN. I think the general observation of the gentleman is absolutely sound. There would be a temptation, and the temptation has already been taken advantage of, to effect these settlements, with the understanding on the part of the employer that the Government will reimburse him for what he has to pay.

Mr. MILLER of Connecticut. Mr. Chairman, will the gentleman yield?

Mr. GOODWIN. I yield to the distinguished gentleman from Connecticut.

Mr. MILLER of Connecticut. Can the gentleman explain to us why the one-year period was determined for the statute of limitations rather than the average throughout the country, which I understand is a longer period of time?

Mr. GOODWIN. Because it appeared to the majority of the committee that that was a reasonable period, considering the unusual subject matter concerned, and that we are legislating here for something entirely apart, in our opinion, from the ordinary run of contracts, and, therefore, the employee should be restricted to that limited period of time if he wants to take advantage of his rights.

There was also this consideration which influenced some of us to some extent. If an employee, and I am not saying that all employees would be of that kind, but there might be some; but if an employee, knowing full well that he would be able to get the benefit of these liquidated damages and penalties and that this right to sue would run over a long period of time, were tempted to withhold the filing of his suit until the period had expired, he could do so in order to get the greatest benefit from it,

and in the meantime the employer would have no notice of the claim to be made against him.

Mr. MILLER of Connecticut. I thank the gentleman. That information will be very helpful in replying to inquiries concerning that matter.

Mr. ROBSION. Mr. Chairman, I arise in support of H. R. 2157, the revised Gwynne bill. Few measures have received more extensive, careful, and sincere consideration than this bill. The members of our Judiciary Committee had no desire except to find a solution that would be just and fair both to employees and employers, and with that high purpose of mind a great deal of time has been given by the members of our committee in hearing witnesses for both sides and also from Federal officials who are familiar with matters of this kind. Our committee was anxious to preserve the rights of the workers and at the same time protect employers from unfair and unjust demands. Let it be said in the outset that this is not a bill in the interest of the chiselers. No one on our committee is interested in that type of employer, and neither are the members of our committee interested in a group of workers making unfounded and unjust claims. We want to protect all from any unfair treatment by chiselers, either employers or workers. We desire to do the right thing and the just thing for workers and employers.

I wish to commend the officers and members of the American Federation of Labor and the editorials in the publication called Labor, spokesman in many respects for the railroad brotherhoods, and also the officers of the railroad brotherhoods, for their condemnation of the avalanche of the so-called portal-to-portal suits aggregating more than \$6,000,000,000. Some of these distinguished representatives of labor pointed out that some of these single suits involved tens and tens of millions of dollars, and in the aggregate amounted to billions of dollars, and were without merit, and the filing of this great number of damage suits was most harmful to the cause of labor. The reaction to these suits throughout the country was most unfavorable to the workers.

I wish to point out, however, that practically all of these suits were instituted by the CIO. Many officials and leaders of the A. F. of L. and railroad brotherhoods urged the members of their organizations not to file such actions. These actions sought recovery and damages from their employers for wages under the wage-and-hour law, also for overtime and a like amount for so-called liquidated damages, attorneys' fees, and costs over a period of many years, and some of our courts take the position that the employees would not have to make out their case but the employers were required to make out the case for the plaintiffs. This litigation was precipitated by a decision handed down by the Supreme Court in the case of Anderson against Mount Clemens Pottery Co. The master commissioner of the Federal judge of that court, after hearing the witnesses, arguments, evidence, and so



forth, made a report to the judge that the plaintiffs were not entitled to recover.

The judge took a different view and awarded the plaintiffs several thousand dollars. The pottery company took the case to the United States Court of Appeals and this court reversed the decision of the district court. The plaintiff, Mr. Anderson, then appealed to the Supreme Court and the Supreme Court reversed the decision of the Court of Appeals and the case was sent back to the district Federal court for further consideration.

In the month of January 1947, under this ruling of the Supreme Court, more than 1,500 cases were filed, making claims for approximately \$6,000,000,000 in wages and damages. The district judge recently retried this case of Anderson against the Mount Clemens Pottery Co. and reached the conclusion that Anderson and his associate workers, plaintiffs in the action, were not entitled to recover any sum. The action of the Supreme Court created consternation among the employers in the country and a lot of unrest among the workers. To meet this situation, many bills were introduced in Congress. Among them was the bill introduced by our colleague, the gentleman from Iowa [Mr. GWYNNE] one of the most capable and honorable men as well as one of the very best lawyers in the House.

In the Seventy-ninth Congress and after the Supreme Court's decision in the Mount Clemens Pottery Co. case the gentleman from Iowa [Mr. GWYNNE] introduced a bill, which passed the House and was also passed in the Senate with some amendments. Due to the adjournment of Congress it was never finally acted upon by the Congress. Many of us believe if that bill had become law we might have avoided this upset in the economic and industrial life of the Nation. We have pointed out that more than 1,500 of these suits were filed in January 1947.

I suggest that my colleagues examine carefully the reason set forth in the bill making necessary this legislation. The bill declares:

That the Congress hereby finds that serious inequities and hardships have resulted and are resulting from the administration and enforcement of the statutes of the United States mentioned in section 5 of this act, thereby creating a serious national emergency, endangering the public welfare, and giving rise to certain evils hereinafter described; that the statutes above referred to, regulating wages, hours of work, and other conditions of employment have been and are being administered and interpreted in disregard of long-established customs, practices, and agreements between employers and employees with the result that:

(1) The retrospective effect of frequent changes and innovations arising in the interpretation and application of such statutes has been and is creating great uncertainty, with new and unexpected financial liabilities upon employers and windfalls of unearned compensation to employees.

(2) Voluntary collective bargaining is being interfered with and industrial disputes are being created.

(3) These new and wholly unexpected liabilities, immense in amount and retroactive in operation, threaten many employers with financial ruin and seriously impair the capital resources of many other employers, there-

by resulting in reducing industrial operations, curtailing employment, and the earning power of employees and burdening and obstructing interstate commerce.

(4) The Public Treasury will be deprived of large sums of revenue and the public finances seriously deranged by claims against the Public Treasury for refunds of taxes already paid.

(5) The cost to the Government of goods and services heretofore and hereafter purchased will be unnecessarily increased, \* \* \* stabilization of the currency, and the maintenance of the national credit.

(6) The courts of the country are being burdened with excessive and needless litigation.

We know that these large claims will impair the credit of many concerns. A company's credit may be good for a million or five million but when some group suddenly files a suit demanding twenty, fifty, or one hundred million dollars, claiming wages and liquidating damages, financial institutions furnishing the credit will at once be alarmed. This would not only close down many industrial plants and throw many workers out of work but it would discourage persons from investing their money in job-producing industries and activities. These suits cover contracts carried on over a period of years and during the war. Many of these contracts were cost-plus, cost-plus-a-fee contracts. Settlements were made with the contractors from month to month on the money paid out by them. If these claims should be allowed, these contractors could come back on the Government, and Government officials indicate that these suits mean a potential liability to the amount of one billion and four hundred million. Early in February 1947, the Maritime Commission had received notification from 18 contractors of the filing of portal-to-portal suits against them claiming \$128,500,000 damage. This Commission states that this would involve an additional liability on the Government for refund to the contractors of fifty million to one hundred fifty million. Of course, the employers had settled with the Government for their taxes on the basis of the amount that they had paid out for wages and so forth.

If the claimants should be successful in these suits, representing billions and billions of dollars, the contractors could come back on the Government for a refund of taxes. This would mean, of course that our national debt would likely be increased and there could be little hope of balancing the budget or reducing the income taxes for the workers as well as the employers.

It can be seen at once that this is not merely a matter of concern between the workers and the employers, but the people of the Nation as a whole, workers and all, are vitally and deeply concerned.

#### COLLECTIVE BARGAINING

The decision of the Supreme Court in the Mount Clemens Pottery Co. case is a heavy blow at collective bargaining. The company and the pottery workers had a collective-bargaining contract freely entered into and which was accepted by both sides as to wages, working conditions, and so forth, and the workers and employer had been operating under that

contract. The Supreme Court ignored this collective-bargaining agreement and authorized the recovery over and above the contract. Such action had never been contemplated by the parties to the contract.

The workers, as I well known, were first given the right under the law to bargain collectively when the railroads were returned to their owners after World War I. I helped to pass that law. In nearly all of these actions involving billions and billions of dollars, the workers and the employers had collective-bargaining agreements but these suits ignore these collective-bargaining contracts and are demanding additional billions of dollars. If these collective-bargaining contracts are not to be observed by the parties to them and one side or the other rises up many years after they have been entered into and makes claims that were not included in or contemplated by either party to the contract, then we might as well wipe out our collective-bargaining statutes.

We have always been told that the right to organize and bargain collectively is a part of the great charter of American labor, but the Supreme Court, in the Mount Clemens Pottery case, disregarded these contracts. Many of these collective-bargaining agreements contain the so-called portal-to-portal pay provisions. The United Mine Workers have such a provision in their contract and many other industries. This bill does not take away the right of the workers and employers to bargain collectively on portal-to-portal pay, the hourly rate of pay, and overtime. This bill reiterates and preserves the minimum-wage law, time and a half time for overtime, and the right to sue for liquidated damages. It takes away no right that the workers now have under the wage-and-hour law, the Bacon-Davis Act, or the Walsh-Healey Act.

This measure denies to workers the right to recover provided the employer has paid the employees the amount agreed upon by collective-bargaining contract, or the amount agreed upon by implied contract or in accordance with custom and practice, where there is no express or implied contract. In other words, if the employer has paid his employees according to the collective-bargaining agreement, or according to an implied agreement, understood between the parties, or without such express or implied contract, according to the custom and practice in that plant and other plants, and in that particular industry and section, he could not be required to pay a greater sum; but, of course, it is expressly stated in this bill that he cannot, by agreement or otherwise, pay less than the statutory minimum wage or less than one and one-half the basic hourly rate for overtime.

It can be seen here at once that the express provisions of the wage-and-hour law, as to minimum wages and overtime, are reaffirmed and continued. Is there any good reason why the employees and employers should not enter into a contract through their bargaining agents, or if the shop or plant is not organized, for each individual to understand fully

what he is to receive and what work he is to do and when his worktime begins and ends? But, the employer cannot enter into any agreement in violation of the wage-and-hour law.

The purpose of this bill is to eliminate trumped-up claims that are not included in agreement between the parties express or implied or are contrary to the customs and practices when the employee rendered his service in the particular plant if there is no agreement express or implied. The wage-and-hour law as to minimum wages and as to overtime, remains intact. Congress is trying to eliminate these billions of dollars worth of unconscionable and inequitable claims. It does not cut out just and honest claims for wages or liquidated damages.

#### EMPLOYER NOT LIABLE

This measure relieves the employer of being mulcted in damages where he has followed and relied upon a decision of a court of record in a case in which he is a party defendant or if he has obeyed in good faith regulations, orders, rules, interpretations, approved enforcement policy or practice of the Administrator and his authorized deputies or Executive orders of the President or other executive officers of the Government in carrying out the provisions of the wage-and-hour law, but in this regard he cannot escape liability if he has not paid the minimum wages or paid for time and one-half overtime as provided by the wage-and-hour law. It would be unfair to permit liquidated damage against employers who followed the orders and the judgments of the courts and the orders and directives of those who administer the wage-and-hour law, the directives of the President and the other executive agents and departments of the Government.

Of course, under this act the employer must pay according to his collective-bargaining agreements with the workers or according to the implied agreement between him and his workers, and if there is no such agreement then according to the customs and practices at the time the services were rendered. It can be seen at once on every hand the rights of the workers under the wage-and-hour law are protected.

This bill also gives the worker and his employer the right to compromise, adjust and settle any claim that the worker may have against his employer, and such compromise or settlement shall be binding in the absence of fraud or duress. Under the present law it has been held that the employer and the worker cannot settle or compromise any dispute as to wages and so forth.

#### LIQUIDATED DAMAGES

Under the present law the worker has the right to sue for back wages, including wages for overtime and attorneys' fees, and for liquidated damages, and under the present law the courts are compelled to award to him liquidated damages for a sum equal to the amount of wages recovered.

In the case of *Missel v. Overnight Transportation Co.* (316 U. S. 572), the Supreme Court expressed regret that the imposition of the full amount of liqui-

dated damages under the Fair Labor Standards Act was mandatory in any case.

This bill does make some changes in that respect. Where the court should find that the employer is liable for back wages, the court must award damages, but he is given discretion as to the amount of damages, not to exceed a sum equal to the award for wages. This is put in the bill as a matter of equity and fair dealing between man and man. There are some chiseling employers. No doubt, a court in dealing with that type of defendant, can and will award to the worker the maximum amount, which is the same as is now provided in the present law. On the other hand, the failure to pay to the employee the full amount of wages may be due to mistake and an honest misunderstanding on the part of the employer. In such a case, the court could award in liquidated damages a less amount than 100 percent. In nearly all of our laws we recognize that there is a difference in degree of culpability or responsibility in civil and criminal cases and Federal courts are given discretion to fix the punishment or amounts according to the degree of culpability as shown by the evidence. Granting discretion in this measure follows the general principle of all Federal statutes. In some cases no doubt 100 percent would be just and proper, while in others a less amount would be in keeping with common sense and justice.

#### EIGHTEEN MONTHS' LIMITATION

It has been pointed out that there is quite a difference in the limitation of time for the filing of actions in the various States of the Union. Many of these have a limitation of 1 year, others more than a year, for collecting wages or other debts; but we must bear in mind that where a longer period of limitation is fixed in these State actions to recover wages, there is not this extraordinary remedy to collect additional sums as liquidated damages or punishment. This is an extraordinary remedy, and the parties ought to be required to appear in court within a reasonable time while witnesses are available and their evidence can be had. It is quite a different thing to be sued for wages or other debts with no liquidated penalty attached and sued to recover for not only the wages but for an additional sum as liquidated damages as punishment and also attorneys' fees and costs.

I worked in the shops and mills and other places by the hour and by the day, and I never had any trouble of knowing whether or not my employer owed me. They paid every 2 weeks, and when any of my associate workers on pay day believed they were paid less than due them there were squawks about it, and they set about to correct whatever error had been made. I cannot understand why it should be claimed that a worker could not find out for several years that somebody owed him back wages. While the limitation is 1 year from the time the cause of action accrues, yet as a matter of fact it is 18 months. This bill provides that the worker shall have an additional 6 months from the date this measure becomes effective to file his

action, provided not more than a year had elapsed before the effective date of this act. In other words, the worker will have 18 months, and not 12 months, on all the claims arising at the time of the effective date of this act.

The chief opponent of this limitation stated that he had no complaint as to the causes of action heretofore accrued. He seems to be worried about the future. I am quite sure that workers in the future will be alert as to the amount of wages that may be due them and will know within a year after they become due and payable.

We are now engaged in general debate. The bill will be read word for word, and full opportunity will be afforded to offer amendments; and while the Judiciary Committee has worked long and hard on this bill, we do not claim to be infallible. We are trying to meet this situation with a measure that will be just and fair to sincere workers and employers, and that will stop chisellers whether they be employers or workers.

Mr. BRYSON. Mr. Chairman, I yield myself such time as I may use.

The CHAIRMAN. The gentleman from South Carolina is recognized.

Mr. BRYSON. Mr. Chairman, in explanation as to how the House Committee on the Judiciary acquired jurisdiction of the bill now before the House, H. R. 2157, I will state that such jurisdiction is acquired by our committee by reason of the fact that the substance thereof relates to the courts. Of course, the House Committee on Education and Labor normally has jurisdiction of proposed laws with reference to labor.

It is generally conceded throughout the country that in view of the confusion which has arisen as evidenced by the number of portal-to-portal-pay suits, that the law should be clarified. The opening paragraph of the pending bill clearly states the condition which now obtains:

That (a) the Congress hereby finds that serious inequities and hardships have resulted and are resulting from the administration and enforcement of the statutes of the United States mentioned in section 5 of this act, thereby creating a serious national emergency, endangering the public welfare, and giving rise to certain evils hereinafter described; that the statutes above referred to, regulating wages, hours of work, and other conditions of employment, have been and are being administered and interpreted in disregard of long-established customs, practices, and agreements between employers and employees with the result that (1) the retrospective effect of frequent changes and innovations arising in the interpretation and application of such statutes has been and is creating great uncertainty, with new and unexpected financial liabilities upon employers and windfalls of unearned compensation to employees; (2) voluntary collective bargaining is being interfered with and industrial disputes are being created; (3) these new and wholly unexpected liabilities, immense in amount and retroactive in operation, threaten many employers with financial ruin and seriously impair the capital resources of many other employers, thereby resulting in reducing industrial operations, curtailing employment, and the earning power of employees and burdening and obstructing interstate commerce; (4) the Public Treasury will be deprived of large sums of revenue and the public finances seriously deranged by claims against the Public Treas-



ury for refunds of taxes already paid; (5) the cost to the Government of goods and services heretofore and hereafter purchased will be unnecessarily increased, thereby causing serious interference with the development of sound fiscal policies, the stabilization of the currency, and the maintenance of the national credit; and (6) the courts of the country are being burdened with excessive and needless litigation.

The many so-called portal-to-portal suits have turned into a giant snowball, gaining size and momentum as it rolls along, to threaten not only the financial structure of many small and large industrial plants and thereby cause unemployment and labor unrest and confusion, but also to place a burden on the taxpayers who must carry a great portion of the load by the refund of taxes by the Government, which the Treasury Department has said must be done in many cases.

It is indeed unfortunate that such a piece of legislation must be contemplated. But in fairness to all concerned, including, of course, the millions of workers in industry, something must be done to stave off this crisis.

As the representative of a great industrial area, I am happy to say that to my knowledge no portal-to-portal cases have been filed in my district. The workers in the textile plants of South Carolina have a high sense of responsibility and an innate regard for justice. They do not search for legal loopholes whereby they may throw their employers into bankruptcy. There are no sweatshops in my district, and consequently there has been a bare minimum of labor-management strife, even when the Nation as a whole was wracked by industrial confusion and strikes.

The need for legislation to forestall the economic catastrophe that would certainly result if the many portal-to-portal suits are permitted to continue until final judicial determination is not a moot question; a national calamity is impending. This is no less true now than before the district court, to which the Supreme Court remanded the case, found that the compensatory time claimed in the action was within the *deminimis* doctrine, for the uncertainty of the employer as to his potential liability for portal-to-portal pay, and so forth, still persists.

The cause of this drastic action stems from the unfortunate fact that the Supreme Court has dared give a definition of the term "work" and other terms which the Congress deliberately refused to define when writing the laws under which these portal-to-portal cases have been filed. Those definitions were left to agreement between workers and employers. The Court established the means whereby millions of employees would be allowed to receive pay for which they had neither bargained nor expected to receive.

It is significant that following the Mount Clemens case, thousands of suits began flooding into the courts throughout the Nation. If prior to that decision it was generally believed by the labor organizations that workers were entitled to receive compensation for portal-to-portal time and other related activities, then why had these cases not come into

the courts long before? It is my observation that labor organizations have never been reluctant to file suits against employers whenever it was believed they had the slightest legitimate claim under the law. Why were these portal-to-portal cases not filed before the Mount Clemens decision of the Supreme Court? It appears that the Court in that case usurped the power of Congress and wrote into the law certain considerations which Congress itself had deliberately omitted.

The subsequent effect of this legislation written by the Supreme Court is illustrated in a letter written to members of the Textile Workers Union of America in Georgia by one of the union officials, in which he said:

The United States Supreme Court has ruled that you are entitled to be paid for all the time you spent in the plant, either before beginning your regular shift or after your regular shift ends.

You will notice that this union official said that a decision of the United States Supreme Court, not an act of Congress, authorized this extra pay for time not spent at work.

Between July 1, 1946, and January 31, 1947, there were 1,913 portal-to-portal suits filed in the United States district courts; of these suits there were 1,515 claiming a definite total of \$5,785,204,606, while 398 did not claim a definite amount, but if they were proportional in amount to those making definite claims, they would add approximately \$1,446,301,152 to the outstanding claims for portal-to-portal pay. In addition, it is to be remembered that there may be many similar suits pending in the State courts, but I have not been able at this time to determine definitely the number of such suits nor the approximate amount claimed.

The recovery of this enormous sum would create a serious Nation-wide emergency, endangering the public welfare, in that it would bankrupt or close many businesses, and may even permanently cripple or destroy whole industries. An instance which would lead to bankruptcy was cited by Frank L. Dirver, of the Dirver-Harris Co., to the House Judiciary Committee when he testified that his company is involved in a suit with the United Steelworkers of America, CIO, covering alleged overtime wages and damages of \$4,000,000. This amount, he asserted, is more than the net worth of the company, and, if finally levied, would bankrupt the company. The closing of a business was cited by Frederick H. Waterhouse, general counsel of the Manufacturers' Association of Connecticut, Inc., when he declared before the Senate Judiciary Committee that one company with 65 employees in his State had been closed down by a portal-to-portal suit for \$65,000. The possible destruction of an industry was clearly indicated by Mr. E. E. Wilson, chairman of the board of the Aircraft Industries Association of America, Inc., when he testified before the Senate Judiciary Committee that the aircraft industry would inevitably succumb if the disaster threatened by portal-to-portal suits materializes.

It is neither hysteria nor organized propaganda that supports the demand for legislation to prevent these portal-to-portal suits, but it is the inherent and undeniable sense of fair play characteristic, thank God, of the vast majority of the citizens of our great country. In this majority there will be found many millions of laborers whose sense of justice balks at such an attempt to reap a windfall of unearned compensation. They realize and readily admit that their contracts and agreements with their employers did not contemplate payment for such inconsequential fragments of time as are the basis of most of the portal-to-portal suits which have been filed so far.

The bill before us is not denying the laborer his just wage.

It is not discernible from the wording, nay, it is not even conceivable to a rational imagination that the Fair Labor Standards Act requires an employer to pay, or entitles an employee to receive, the wages demanded in the many fantastic claims filed. For example, Fred Davis, treasurer of the Potash Co. of America, cited the suit against his company in which pay is demanded for a 21-mile bus ride in a public carrier from the workers' homes to the mines, for cleaning up time, and for walking time.

This bill is applicable to every claim, cause of action, and action for the recovery of wages, overtime compensation, penalties, or damages—actual, liquidated, or compensatory—pursuant to the act of August 30, 1935 (49 Stat. 1011); the act of June 30, 1936 (49 Stat. 2036, the Walsh-Healey Act); and the act of June 25, 1938 (52 Stat. 1060, the Fair Labor Standards Act). The bill requires that all actions predicated upon the foregoing acts for the foregoing reasons shall be brought within 1 year after the cause of action accrues but requires that all actions accrued upon the date of approval of this bill shall be brought within 6 months. This provision, I think, is constitutional, for all that is required in such cases is that a reasonable time be allowed in which to bring suit. See *Mills v. Scott* (93 U. S. 25); *Vance v. Vance* (108 U. S. 514); *Wilson v. Isminger* (185 U. S. 55); *Atchafalaya Land Co. v. F. B. Williams Cypress Co.* (250 U. S. 190).

The act, in addition to placing a limitation upon these causes of action, permits a defense of good faith when consistent with or in reliance upon a court decision or an administrative order or regulation. Certainly this provision is not unreasonable nor inconsistent with justice.

The bill allows the compromise, adjustment, settlement, or release of liquidated damages. This is in accordance with the usual procedure and is felt necessary because of a previous ruling of the Supreme Court in the case of the *Brooklyn Savings Bank v. O'Neil* (325 U. S. 697).

In favor of labor this bill permits courts to award penalties or damages upon proof of bad faith on the part of an employer with respect to wages claimed under these acts.

On the other hand the employer is protected under the bill by a prohibition

against recovery of wages for activities which were not required to be paid for by custom or practice of such employer or by express agreement between the employer and the employee or his collective-bargaining representative.

To accomplish these purposes the bill denies jurisdiction to Federal to other courts except in conformity with the foregoing provision.

Manifestly all of the provisions of the bill are not totally acceptable to all the Members of the House. It must be acknowledged that the subcommittee on which I served as a member of the Judiciary Committee, has carefully considered all the testimony and the present bill is a fair compromise of all the views expressed.

Mr. Chairman, I now yield 10 minutes to the gentleman from New York [Mr. KLEIN].

Mr. KLEIN. Mr. Chairman, in my opinion, there are many objectionable features in this bill, but I will devote my remarks at this time to the statute of limitations, the 1-year limitation in the bill.

I can conceive of no greater incentive to violate the provisions of the Fair Labor Standards Act than that offered under this bill. Here is a bill that would practically wipe that law from the statute books. It would expunge that law by extracting its teeth, leaving its minimum wage, overtime compensation, and child-labor standards mere pious declarations, to be flouted at will by unfair and unscrupulous employers.

I am referring to section 2 (a) of this bill, which curtails the rights of employees to sue for back wages under the Fair Labor Standards Act. This section provides that no action shall be maintained unless the same is commenced within 1 year after such cause of action accrued. There are other rights that are abridged under this bill, but I want to direct your attention, Mr. Chairman, to this section which limits a worker's right to collect back wages illegally withheld from him—wages that are rightfully his—to a period of 1 year. His grocer, his butcher, the small-loan company from whom he borrowed money, the automobile finance company can sue him for a period of from 3 to 6 years on his debts. But his rights on a debt of his employer—on money he earned which has been proved to be due him—would be limited to but 1 year under this bill.

Let us look at the facts. The Wage and Hour Division, in its annual report for 1946, states that there are currently about 550,000 establishments with employees subject to the Fair Labor Standards Act. During 1946 the Division inspected 42,000 of these establishments. At that rate of inspection—and let me say that the Division did a pretty good job in enforcing the act—at that rate it seems virtually certain that an employer can illegally withhold money from an employee for more than a year before the Division finds it out.

I have heard it mentioned here that the wage-and-hour law is pretty much self-enforcing—that section 16 (b), which gives employees the right to sue, takes care of enforcement. I wish it were true, but it just is not so. The an-

nual report of the Division states that employee's suits have been instituted in only a small percentage of cases in which substantial violations were found. In fact, not only do few workers sue their employers but only 14 percent of the inspections made were made as a result of complaints. Only about 6,000 workers of about 20,000,000 covered by the act filed complaints against their employers. It is evident that employees are slow to sue for their back wages, even slow to file complaints. Either they are afraid to sue or file a complaint or they do not know their rights under the law. This is particularly true of the workers who do not belong to a union, and about half of the workers covered by the wage-and-hour law do not belong to unions.

These figures, representing employee suits and complaints, do not mean that the rest of the employers were complying with the act. I will quote you a few more figures from the Division's report. Half of the 42,000 establishments inspected in 1946 were in violation of major provisions of the act, 36 percent in substantial violation. In that 1 year, the Division found over \$21,000,000 due as back wages owed to 365,000 employees. This was a year of generally high wages and high profits, yet 11 percent of the establishments inspected were in violation of the minimum-wage provisions of the act.

These figures indicate clearly that dependence cannot be placed on the worker to enforce the act, that in thousands of establishments there are violations which employees—through lack of knowledge of the law, through weakness or fear—do not bring to light. And every violation, Mr. Chairman, means that the law-abiding employer is put at a competitive disadvantage. Regardless of whether the violation is intentional or not, the competitors of the violator must operate at a disadvantage.

I do not wish to seem to imply, from the statistics I have quoted, that half the employers in the country are violating the Wage and Hour Act. The Division states that it inspects where a need for enforcement is indicated, and perhaps a measure of its success in this endeavor is the high ratio of violations found. I do want to make this clear—it is not the employer who complies with the act that is our chief concern, it is the chiseler, the corner-cutter, and the downright unscrupulous who need our attention. It is this small percentage of employers who drag down our business standards and make it harder for the overwhelming majority of our American businessmen to compete on a decent basis. These are the men for whom we need a Fair Labor Standards Act—let me call it a Fair Labor Competition Act—and these are the men we should keep in mind in voting on this bill. With this kind of employer, a 1-year statute of limitations is utterly and totally inadequate unless we are prepared to greatly enlarge the Division's enforcement staff.

The 1 year given an employee to sue for his back wages, it is evident, must be looked at realistically. The typical worker does not institute suit against his employer—he waits for the Division to do so. Where violations are involved,

the Division has found that about 4 months are required to complete the inspection. There may be several more months involved in attempting to get the employer to come into compliance and pay the back wages rightfully due his employees. If he refuses, another 2 months are required to prepare the case for court action after the employee is informed of his rights. And this is the case where violations are promptly brought to light. In the great majority of cases claims will be barred under this bill even before they are ever brought to light.

Mr. Chairman, you can see what a 1-year statute of limitations means to the law-abiding businessman. He gains nothing by it, he plays fair. His competitors who operate unstable concerns, who have a great temptation to cut wage costs, can chisel and undercut him with practically no penalty to them. The wage-and-hour law would remain on the books, but it would be an empty and meaningless law. In the period into which American economic life is entering, a highly competitive period where businessmen must struggle to reduce costs and lower prices, we need a Fair Labor Standards Act that has teeth in it.

I urge the Members of this House to recommit this bill, so that we can have an equitable bill brought before us.

I understand my colleague the gentleman from New York [Mr. CLEGG] will introduce an amendment tomorrow to raise the statute of limitations to 2 years. I hope that the Members will see fit, in their wisdom, to vote for it.

Mr. COUDERT. Mr. Chairman, will the gentleman yield?

Mr. KLEIN. I yield to my colleague from New York.

Mr. COUDERT. My colleague the gentleman from New York, as well as our other colleague from New York, contends that in judging the significance of the merits of the proposed 1-year statute you may judge it by analogy to the long list of statutes of limitation applicable to all other sorts of suits and claims.

Mr. KLEIN. That is correct.

Mr. COUDERT. Does the gentleman completely ignore the profound and vast difference between this kind of a claim and the ordinary contract claim where the amount sued for was fixed and final at the time the debt was originally contracted, and could only increase through the years by the amount of interest for failure to pay, whereas in this case are we not dealing with a claim that is unknown to begin with, unascertainable in fact, constantly increasing and contingent, so that the employer in the case is entitled to have his liabilities either disposed of or fixed at an early date so that he will not run the risk of being confronted by numerous unknown and unascertainable liabilities.

Mr. KLEIN. My colleague from New York is too good a lawyer to use that kind of argument. There are many, many cases, and I am sure he knows of them, where suit can be brought for a claim, the amount of which was not ascertainable at the time it accrued or that the debt came into existence. Certainly he will not deny that in our State, particularly, we have a 6-year statute of



limitations for debts of this kind. I cannot see that it makes much difference what kind of a suit is brought; whether it is for an ascertainable amount, or whether it is on contract. If a debt is actually due, then the creditor should have the right to bring suit within a specified period. I do not believe, however, that he should be limited to so short a period as this.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentlewoman from New Jersey [Mrs. NORTON].

Mrs. NORTON. Mr. Chairman, my particular interest in this bill is in its relation to the wage-and-hour law.

I have asked for this time in order to comment on certain aspects of this legislation which I believe may be lost sight of because of the emphasis on portal-to-portal issues dealt with in H. R. 2157. I believe that the public and this Congress have an interest in these aspects of the legislation which is at least equal to the interest of management and labor.

I refer to the interest which the entire Nation has in maintaining a national uniform floor under wages which will protect the minimum living standards of the millions of unorganized American wage earners and which will protect the ethical American employer against the unfair competition of those relatively few employers who would again under this bill be able to obtain a competitive advantage at the expense of their employees' wages and living conditions. Section 3 of the pending bill in effect defines work for purposes of the Fair Labor Standards Act of 1938, the Davis-Bacon Act of 1935, and the Walsh-Healey Act of 1936, as those activities for which each employer pays, according to the custom or practice or agreement in effect at the time in his plant. What does this mean? It means, in my opinion, an opportunity for complete destruction of the national minimum-wage standards established in the Fair Labor Standards Act. Such a definition leaves unorganized workers at the mercy of their employers. Whatever work their employers choose to pay for will, under the provisions of section 3 of this bill, become the compensable work-time under the law, since the employer's payment will establish the custom or practice or employment agreement for his plant.

In the nature of things, such practices will vary from plant to plant, industry to industry, and area to area. Thus, instead of a uniform floor under wages for the entire country, we shall find ourselves with a multitudinous series of levels. As a matter of fact, the floor need not even remain constant at the same plant since the employer can, under the language of the bill, change his custom and practice from pay period to pay period. I am afraid that the legislation, if enacted, may as effectively cut the heart out of the minimum-wage and overtime provisions of the wage-and-hour law, as well as the Walsh-Healey Public Contracts Act and Davis-Bacon Act, as would a bill permitting each employer to decide for himself whether to pay 20 cents an hour, or 30 cents an hour, or 40 cents an hour. For if an

employer paying 40 cents an hour can work his employees 10 hours a day and pay them only for 8 hours, he is in the same position as if he were permitted to pay them only 12 cents an hour for 10 hours of work. Thus, an employer whose practice is not to pay for such make-ready work as obtaining and cleaning tools, preparing machines, and putting on required safety equipment will, under this bill, receive a substantial competitive advantage over the more modern and enlightened employer whose custom is to pay for such work. It is easy to foresee that in a short time the employers with the antiquated and unfair practices will force down the standards of their more modern and ethical competitors.

There are other important aspects of the legislation: a 1-year statute of limitations, provision for compromises of claims in the future, the establishment of a good-faith defense to new suits, and the nullification of the effectiveness of future employee actions, all of which I shall attempt to analyze.

The so-called portal-to-portal bill prepared by the Judiciary Committee may have started out as a bill to solve the problem of retroactive liability arising out of claims for portal-to-portal pay made after the Supreme Court decision in the Mount Clemens Pottery case. The bill, in fact, goes far beyond the portal-to-portal pay question and constitutes instead a full-scale attack on the very foundations of the Fair Labor Standards Act and the other acts to which it applies. It alters basic provisions of the act, cancels fundamental rights under it, and thwarts its objectives. Even that part of the bill which seems most nearly pertinent to the portal-to-portal question is far too sweeping in its reach and far too drastic in its remedies.

I realize that a great deal of excitement and public emotion have been generated by the wide publicity given to the portal-to-portal pay suits. There is grave danger that the good work and the hard work of many years in the establishing of fair labor standards for American industry will be undone if the indiscriminating emotionalism with which the phrase "portal to portal" seems to be charged is permitted to carry along this bill to enactment. Every part of this bill should be given the most careful scrutiny, so that the full meaning of its unjustifiable and insupportable provisions may be made clear.

As I have pointed out, the bill applies to the Fair Labor Standards Act, the Public Contracts Act, and the Davis-Bacon Act. Section 1 is a long description of the uncertainties in industry, losses of revenue by the Government, and other aspects of enforcement of the Fair Labor Standards Act, all of which together are represented as tending to burden and obstruct the flow of commerce. The presumptive purpose of this section is to give the amending bill the status of having a purpose lying in the same general field as the Fair Labor Standards Act itself, and to secure the advantages of its construction by the courts as a remedial statute.

The statement is made in section 1 that these laws "have been and are being

administered and interpreted in disregard of long-established customs, practices, and agreements between employers and employees," with results that are described as threatening the entire fabric of the American economy and jeopardizing the functioning of the Government. This is an astonishing assertion. If the Congress which enacted the Fair Labor Standards Act of 1938 had not intended antisocial practices of certain types of employers in dealing with their employees to be replaced by minimum fair labor standards, that Congress would not have passed the law. As to the final interpretation of the law, under the Constitution of the United States that function rests with the courts. Certainly, in matters which the Administrator was given authority to issue regulations, he has exercised the utmost care and judgment in ascertaining the full facts of the industrial operations and the employer-employee relationships involved. Interested parties have been heard in full statements of their views. Decisions in such matters were made, giving the greatest possible weight to the need for avoiding disruption of industry, consonant with the basic objectives of the law. The right to petition for hearing and for review of administrative acts has been held open.

Some remarks are in order, also, on the extent of the calamity described in section 1 as hanging over the Nation. The portal-to-portal pay claims have been grossly exaggerated. This scarcely needs elaboration, in view of Judge Picard's recent decision, dismissing the claims in the Mount Clemens Pottery case. Perhaps the vast effects so vaguely and terrifyingly set forth in section 1 are an indirect admission of the obvious fact that this bill goes very far beyond the portal-to-portal question.

The content of the substantive sections of the bill are given here in brief summaries, to provide a quick view of its tenor and scope. Comments on each of the major provisions follow.

Section 2 (a): One-year statute of limitations.

Section 2 (b): Six-month savings clause. This does not appear to apply to actions covered under section 3, below.

Section 2 (c): Individual claimants must be named in the action.

Section 2 (d): Time lost in serving process because the person liable is outside the United States is disregarded in computing the applicable period of limitations.

Section 2 (e): Employer's defense in pending or subsequent actions: good faith, consistent with or in reliance on any decision of a court in connection with which such employer was a party in interest, or any administrative regulation, order, ruling, interpretation, enforcement policy, or practice.

Section 2 (f): Compromise or waiving of claims. Any and all claims that have arisen under the acts or that will hereafter arise under the acts may be compromised or waived at any time and under any circumstances. The provisions of the subsection are also applicable to settlements previously made.

Section 2 (g): Damages. The Court may award not more than the amount

specified under the law as penalty or damages, in its discretion, if the violation was "in bad faith and without reasonable grounds."

Section 3: No action may be maintained for payment for activities heretofore or hereafter engaged in not specifically required to be paid for either by plant custom or practice or by express agreement.

Section 4: The provisions of the bill are applied to future and pending actions, including actions in which final judgment has already been entered but from which an appeal can still be taken.

Section 5: The bill applies to all actions under the Fair Labor Standards Act, the Public Contracts Act, and the Davis-Bacon Act:

Any parts of said acts inconsistent with any provisions of this act are to such extent hereby repealed.

Section 6: Separability of provisions.

#### SECTION 2

The sweeping provisions of section 2 go far beyond the portal-to-portal problem, and strike at the foundations of the enforcement of the act. The 1-year statute, the good-faith defense, the compromising or waiving of claims, and the bad faith and without reasonable grounds barrier to the imposition of liquidated damages in any court action actually concluded are basic changes in the whole structure of administration and enforcement of the act. The 1-year statute and some parts of the good-faith provision would require several times the Division's present staff in administrative employees as well as in enforcement employees in order to leave some hope of maintaining even the present dangerously low level of enforcement activity. Other parts of these broad provisions are so elusive and disruptive as to preclude any expectation of equitable law enforcement if this bill is enacted.

#### SECTION 2 (A)

The 1-year statute of limitations would virtually nullify the rights of hundreds of thousands of employees to the wages legally due them under the acts even if this were the only change proposed. Many employees do not know of their rights under the FLSA, for example, until after the Divisions have made an inspection. The disclosure of violations on inspection results in the employees' finding out that money is due them. By the time the inspection case is closed an employer of the type that is intent on evading the act may cancel claims of the employees by coming into temporary compliance. The provisions of the acts would thus be ineffective both as measures to compensate employees for the loss of wages legally due, and as measures to discourage the unscrupulous type of employer from violating the law. With a 1-year statute and an enforcement staff that can inspect only one-twelfth of all establishments with covered employees in a year, an employer seeking an unfair advantage over his law-abiding competitors at the expense of his own employees can do so almost with impunity.

It is obvious that employers voluntarily maintaining fair-labor standards

would be subject to severe competition. Employees in low-standard establishments would fail to secure the protection of minimum standards established in the act. No doubt the millions of unorganized workers engaged in covered activities would feel this blow first, but the competitive inequities thus created would soon spread to all covered employment. The whole purpose of the act would be thwarted.

#### SECTION 2 (C)

The added requirement that each employee must be named in the action merely tightens the stricture of the 1-year statute. In almost every inspection case disclosing violations it is found that there are many former employees to whom back wages are due. If the Divisions have made an inspection, the Divisions might succeed in locating former employees to tell them what their rights are, but the time lost in finding them would mean a further whittling away of their just claim for reimbursement. In the ordinary case such former employees would lose out altogether.

#### SECTION 2 (E)

The good-faith defense would on its own account be as disastrous to equitable enforcement of the law as the 1-year statute of limitations. The provision deals with action consistent with, required by, or in reliance upon administrative regulation, order, ruling, interpretation, enforcement policy, or practice. In its context in the proposed bill this provision merely adds confusion to a situation already hopelessly chaotic. Even if it stood by itself, however, it would seriously undermine enforcement. The inclusion of interpretation, enforcement policy, and practice as defenses against action for recovery would greatly burden the administration of the act. Inspection activity would be bogged down under the necessity for extreme thoroughness, with no possibility for oversight or omission and little or no room for on-the-spot judgment of the inspector.

This would follow from the fact that any action or decision by an inspector could be considered an administrative enforcement policy or an administrative practice. Detailed searching to make sure there is no minor error or omission would ordinarily not be worth while in terms of securing the maximum compliance with limited personnel. Under the proposed bill, few errors or omissions could be considered minor. The failure to check through on such a matter in a single inspection might result in non-compliance over a wide area if the word were spread that a new practice was available for use in court defense. Inspection time on a case would thus be greatly lengthened and the large increase in the inspection staff would be necessitated. Along with this would be the need for careful and detailed review of each inspection case before closing in place of the currently used, and far more efficient, spot-check postreview. Reviewers would call upon the national office for detailed analyses in advance of closing cases involving difficult questions and decisions that could be interpreted in varying ways under other circumstances.

These provisions of the proposed bill are worlds apart from a clean-cut grant of the rule-making power. Under the rule-making power, all pertinent evidence is analyzed, interested parties are heard, and expert judgment applied to any of the major problems arising in the administration of the law. The aim is to clarify the rights and obligations of parties subject to the law and to achieve a reasonable balance between the needs of uniformity in law enforcement and of a reasonable flexibility in the application of general rules to complex and varying situations.

Whatever the purpose of the provisions of section 2 (e), the results are very different from those to be achieved under a rule-making power. Thousands of employers would argue before thousands of judges as to the meaning of a "practice," and as to whether their own action was consistent with a given decision or practice or "in reliance" on it. Economic situations are complex and changing. The situations differ, and so do opinions about them. Assuming "good faith" on the part of all concerned, the result would still be chaos.

#### SECTION 2 (F)

Section 2 (f) provides for the settling, in whole or in part, of any claim arising under the acts. The provision also applies retroactively to any settlement previously made. There are no safeguards in this provision against unfair settlements. There is no requirement, for example, for administrative or court review or approval. In addition to weakening the employee's rights to liquidated damages and even back pay under the FLSA, for which compromise might reasonably be permitted in certain situations and with proper safeguards, it permits compromise settlements of employees' rights to the basic wage guarantees in the act.

This provision would apply not only to the past but to the future. It would result in a very uneven application of the act, since each employer's liability would vary with his ability to "drive a bargain" with his employees. Workers in unorganized low-wage industries would be likely to settle claims on an individual basis and would thus get a relatively smaller share of the wages and damages due them. Even if the waivers or compromises are limited to disputes on hours worked and on rates of pay in excess of the minimum, the basic minimum wage would still be seriously endangered. Hours actually spent on the employee's work might be traded away in a compromise by an employee getting the bare minimum for the hours for which he has been compensated. The result would be the granting of full legal sanctions to what is in fact a violation of the statutory minimum wage.

The result of this unlimited permission to waive or compromise basic rights under the act would be the wholesale cancellation of wages due. The authorization to make settlements would apply not only to past liabilities but to future liabilities as well.

This sweeping authorization for employers to compromise or arrange the waiver of any and all claims under the



act violates a fundamental principle of labor legislation. Traditionally, and uniformly, labor legislation has outlawed the compromising or waiving of the wage earner's claims for pay due him under the law. This has always been recognized as a basic protection of the individual employee and of the complying employer. Without it there is gross inequality in the benefits actually received by individual employees who are within the scope of the law and who are equally affected by its terms. Without it the law applies unequally to competing employers who are intended to comply with uniform minimum standards.

Here, again, the bill proposes an answer that is all out of proportion to the problem in hand. The problem of uncertainty under the law is raised and the solution proposed is to nullify the law, not only for the area of uncertainty but over much wider areas; not only for the past but for the future. This is done in spite of the availability of a clear remedy for uncertainty in the future. The rule-making power, with whatever guides and boundaries the Congress chooses to set upon it, is the obvious answer, for the future, to the problem of uncertainty. This is the answer that would not whittle away basic substantive provisions of the act but would apply directly to the problem of uncertainty. This is the answer of those who do not seek to undermine the substance and purpose of the act but who truly seek to improve its administration.

The final subsection of section 2 rules out liquidated damages unless the court finds that the violation was in bad faith and without reasonable grounds. Where the court makes such a finding it may in its discretion award damages not to exceed the maximum now provided in the act. The extremely broad definition of good faith provided in section 2 (e) would put an almost insurmountable barrier in the way of an award of liquidated damages. It appears to be intended to make this even more difficult by adding "and without reasonable grounds." Such a provision would encourage the unscrupulous employer to find some plausible pretext for underpaying an employee. After the long delays and hardship of litigation, the employee would still be most likely to receive only the sum to which he was entitled in the first place. There is thus no incentive for this type of employer to pay what the law requires. Operations of such employers constitute the type of competition in labor standards that the law was designed to prevent.

The individual employee would have to go through the difficulty of court action in order to recover the wages he should have been paid currently. He is in no way reimbursed for the delay. Unorganized employees are the most likely to suffer this loss.

#### SECTION 3

This section provides that no action may be maintained against an employer to the extent that such action is based upon nonpayment for activities which at the time of the nonpayment were not specifically required to be paid for by

custom or practice of the individual employer at the individual employee's place of employment, or by agreement at the time in effect between the employer and the individual employee or the employee's collective-bargaining representative. Section 3 is apparently the section designed to deal with the portal-to-portal problem. In other words, this section is the vehicle on which the whole bill rides. It is obvious that, even in this section itself, the bill goes far beyond the portal-to-portal question and beyond anything that could be called a related question.

No activities are excepted from section 3. It is therefore not limited to fringe activities or matters that have been subject to debate, but to a host of other activities that the vast majority of employers have long regarded as part of the workweek. The section would perpetuate the worst practices followed anywhere. Employers who have been refusing to pay for special types of work done by their employees in open defiance of regulations by the Administrator or by specific ruling of the Supreme Court in situations totally unrelated to portal to portal could continue to do so with impunity. Practices of the type that obtained before the act was passed would now be made legal. For example, an employer in a logging operation who refused to pay his mule tender for 2 hours a day spent in feeding and taking care of mules could legally continue that practice. A mine operator who refused to pay his miners for hours of arduous work laying track, putting in supports, and extending drifts underground would be free to go ahead.

Not only would such existing evils be perpetuated, but employers of the type engaging in them would be encouraged to institute new practices of that sort. There is nothing to prevent the unscrupulous type of employer from instituting new practices depriving his employees of pay that is morally due them and would be legally due them but for section 3. The individual employee in the unorganized establishment has no choice but to agree when confronted with pressures, statements, or implications that would still be well within the bounds of provable fraud and duress. And even this last puny protection of such employees does not appear in section 3. Compromise and waiver of wages due are limited under section 2 (f) by the requirement that there must be no fraud or duress. While this may be legally implied in section 3, it is not mentioned. In any event, it would be a forlorn hope to think that fair labor standards could be maintained when any employer is free to make any arrangement he pleases with respect to compensating his workers for various types of activities with only the proviso that he must not engage in fraud or duress in a manner making it possible for his employees to prove fraud or duress in court.

Obviously, section 3 is not designed to clarify labor standards, but to undermine them. Whatever its purpose, this is the effect.

Other courses of action are clearly open to anyone interested in solving the

portal-to-portal problem within the framework of maintaining fair labor standards. Section 3 does not even give the minimum protection to employers voluntarily maintaining decent labor standards against the unfair competition of other types of employers that might be obtained by looking to industry practice rather than the practice of an individual employer.

It would be far better to approach the whole problem through rule-making power. Even the most extreme position for which there could be any shadow of defense should limit the compromising or cancellation of employee's rights in the debated issues to past liabilities. Many would question the wisdom and justice of going that far. Surely, some safeguards must be provided in administrative or court review of compromises or settlements. Some rules must be set down that have regard for the basic value of general application of a law. Provision for flexibility is important, but if each employer can rewrite the law on his own terms, there is no law. Under section 3 there is no hope of establishing fair labor standards with respect to the activities involved in areas where such standards have not yet been established, or of maintaining them for long where they now obtain. The activities to which section 3 would apply are not defined, and the language is vague enough and broad enough to include an enormous range of activities. The enactment of section 3 would be disastrous to efforts to establish and maintain fair labor standards.

All of these issues cause me to conclude that the pending legislation, although allegedly aimed only at the so-called portal-to-portal issues, in reality hits at and destroys the very foundation and cornerstone of the minimum wage and other labor standards embodied in the Fair Labor Standards Act of 1938, as well as the Walsh-Healey and Davis-Bacon Acts.

So I emphasize, and repeat, that this bill raises issues far beyond the travel-time problems so sensationally presented in the newspaper headlines. This bill compels us to ask ourselves searching and serious questions as we consider and prepare to vote on its provisions: Are we against a real, honest-to-goodness minimum-wage law with national uniform standards? Do we wish to stop protecting the millions of unorganized wage earners of this country and the thousands of fair-minded, ethical businessmen against the destructive and unfair competition of those few who would pay subminimum wages in order to gain a competitive advantage? Or are we fair-minded and patriotic enough to place the prosperity and national welfare of this country ahead of selfish partisan advantage and narrow class interest? These are serious questions which must be honestly answered when we vote on this bill.

Mr. CELLER. Mr. Chairman, I yield 6 minutes to the gentleman from North Carolina [Mr. BARDEN].

Mr. BARDEN. Mr. Chairman, I think we are about 8 years late in passing this legislation, but I am delighted to see

that the House has finally gotten around to again considering a bill with the provisions contained in H. R. 2157. This is the second time I have advocated these provisions on the floor of this House—and I hope they will be adopted. The thing that shocked the American people about these portal-to-portal suits was the unfairness involved. To me that is a rather encouraging indication. I am not afraid of the American employer. Most of them I know are good Americans. I am not afraid of the American employee. The overwhelming majority of them are good Americans. I am not afraid to let them deal among themselves. I am afraid we can bring about a serious situation if we continue to promote and encourage strife, differences, confusion, and lawsuits between employees and employers.

There is nothing taken away from the employees in this bill. What so-called rights are taken away from the employees? This Congress passed an act and wrote provisions in it for overtime pay, and so forth, and unwisely left out any statute of limitations or any definition as to what should be compensable work, or any protection to an employer proceeding in good faith to comply with an Administrator's order. Under that law we proceeded in a normal way for several years. Just recently a few folks discovered a technicality whereby they could get something—this does not apply to the rank and file of labor—but where they could get something to which they had never thought of being entitled. Then along came the agitation and along came the suits. I will say right now you had better not give much consideration to a reduction of the budget and a reduction of taxes unless you do something to stop these claims, amounting to several billion dollars, that will eventually have to be paid by the Federal Government. You had better incorporate that in your budget for the coming year if you are going to defeat this bill. That is just plain ordinary horse sense.

I have never been much of a man to try to get something which I did not feel I had earned, and to which I was not justly entitled. I have never felt I was justified in pressing a claim against one of my neighbors just because some loose clause in the law would give me the right to proceed against him. I would rather have a little more sound basis for action. The average worker feels that way. This was a statute. What rights they have were conveyed under that statute by this Congress. If the Congress feels it has made a mistake, then the same Congress which wrote that law should have and does have the right, the duty, and the obligation to correct it and make it fit into our American plan of economy.

I have been sitting on the Labor Committee for several weeks, and I say to you that I am not an alarmist when I say that some agitators are rapidly trying to spread dissension, confusion, and disturbance between the employers and the employees. Pitting one against the other.

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. CELLER. Mr. Chairman, I yield three additional minutes to the gentleman from North Carolina.

Mr. BARDEN. Somewhere, somehow the other 140,000,000 people in this country are going to demand some consideration. No sensible man would want to injure, harm, or retard the financial, social, or economical progress of a worker, certainly not; and no fair-minded, honest man would want to encourage any worker to step in the face of anybody else who might also be a worker. On yesterday while the president of the Brotherhood of Railroad Trainmen was before our committee—and I have always regarded the Brotherhood of Railroad Trainmen as one of the model employee organizations of this country—I think in the main they are sound and composed of very fine men—but we were discussing the question of strikes, and he said, "Our only weapon is to strike and if need be to shut down the railroads."

I asked him how many million workers were employed in the railroads, and he said about 1,000,000. I asked how many million electrical utility workers there were, and I think we agreed on something like 4,000,000. I said, "There are 5,000,000 men, and these 5,000,000 men can stagnate our national economy, throw our society out of joint, do billions of dollars of damage, and impair the health, convenience, and happiness of every citizen in America."

Then I said to Mr. Whitney: "I want to ask you the \$64 question which we as legislators must answer, and that is, If the strike is your weapon, what kind of weapon have the other 145,000,000 got to defend themselves with?" He did not have the answer.

The answer to that, Mr. Chairman, is the answer the people of the United States are expecting us to bring forth. I hope we can work it out. I refuse to accept the theory that in order to make five or ten million secure we must make 140,000,000 insecure. There should be, and I believe there is, a way to provide equal security to all, employees and employers alike. Unfair laws, unfair treatment of the strong or the weak, rich or poor, majority or minority, organized or unorganized, has always been frowned upon by the American people; and if such a law is passed, its life will be of short duration, so long as we remain a democracy committed to the principle of equal justice to all.

It has been brought forcibly to our attention that the National Labor Relations Act contains some one-sided and unfair provisions. I hope we will hasten to correct them. No good can come from their continuation as statute law. Let us pass H. R. 2157 now, then turn to other corrective legislation which trial and error has proven to be necessary.

Mr. MICHENER. Mr. Chairman, I yield 10 minutes to the gentleman from Indiana [Mr. SPRINGER], a member of the Committee on the Judiciary.

Mr. SPRINGER. Mr. Chairman, at the very outset of what I have to say on this subject I wish to compliment the subcommittee which has handled this particular piece of legislation. The gentleman from Iowa [Mr. GWYNNE], chair-

man of the subcommittee, has worked for a long period of time on this subject. He has reviewed many of the cases. He has a fine background for this service, I may say, in the Seventy-ninth Congress when he prepared and introduced H. R. 2788, a portion of which measure is embraced in this particular bill now under consideration. H. R. 2788 passed the House of Representatives and also it passed in the Senate in the last Congress, but there was some slight disagreement between the House version and the version of the other body. Before the conference committee could act upon it and report the measure back to the House and to the other body, the Congress adjourned and that particular measure was not adopted.

May I say that the very first portion of the present pending bill, H. R. 2157, embraces practically everything embraced in H. R. 2788 of the Seventy-ninth Congress. It refers to the collection of penalties which grow out of the administration of the Fair Labor Standards Act, the Walsh-Healey Act, and the Bacon-Davis Act. I may say that I happened to have served as a member of the Subcommittee of the Judiciary Committee which held hearings on H. R. 2788 in the Seventy-ninth Congress.

Mr. Chairman, there is one particular matter to which I wish to direct attention, and this has been emphasized by some of those who have spoken on the measure—that is, the statute of limitations which has been fixed in the pending measure with respect to the time actions should be commenced to collect penalties and so forth under this measure. All of us know that there has been no Federal law upon this subject. When these various acts were passed there was no provision contained with respect to limitation of time within which such an action may be filed. The result was, and the result has been, that under the conformity law those actions have been forced to resort to the statute in the particular State in which such action was pending. That has been true throughout, and that is true up to the present moment.

This measure, in the initial portion, seeks to fix the statute of limitations in this measure and provides 1 year as that limitation for commencement of the action. May I say to the membership that this limitation does not mean the action must be brought, the case tried and disposed of before the expiration of 1 year. It merely means that the action shall be filed and commenced within that period of 1 year. Then it is thereafter tried and disposed of in the regular course, which may be 2 years, it may be even longer before the action is finally disposed of in the court in which the action is pending.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I yield to the gentleman from California.

Mr. HOLIFIELD. I may say to the gentleman all of us are deeply interested in this bill. We realize that something should be done in regard to certain of these unjustified suits. How does the gentleman reconcile the fact that in practically all other cases in law more



than a 1-year limitation is allowed, while you enforce the 1-year limitation here?

Mr. SPRINGER. I understand the gentleman's question and it is a good one. May I say that where you recover a penalty, as is provided in this particular measure, where you recover double damages, where you recover attorney's fees, it becomes a penalty statute. In my own State of Indiana we have a provision by which there are mechanics and materialmen's liens, where the lien may be asserted if filed within 60 days and it becomes a lien on the property. That lien may be foreclosed. It gives the person who asserts the lien a priority and the property may be sold for the purpose of obtaining funds with which to pay the lienholder. That is a penalty measure. In my State of Indiana, those actions must be commenced within 1 year. They do not fall in the same category as other classes of cases, for instance a tort case for damages, or a case on account, or matters of that kind, in which a longer period of time is granted. But those actions which provide a penalty measure, such as this one here, and such as the mechanics or materialmen's liens to which I have just referred, are in a different and separate category, and the action must be brought in a much shorter period of time, so that all persons may know what the situation is and what has developed.

Long delay in the institution of suits in such class of cases as those to which I have referred, under H. R. 2157, is disadvantageous to both the employer and the employee. As a matter of fact, the employee wants to know whether or not he is going to get that additional money. On the other hand, the employer should know, and he has a right to know, what his budget should be. If an action of that kind is long delayed, and there is a multiplicity of those actions, those might well operate to put that plant out of business and throw every employee off the pay roll. Witnesses become scattered. Their evidence is unobtainable after a long period of time elapses. Persons who are cognizant of the facts die and their evidence cannot be secured under any circumstances. So to my way of thinking, may I say to my good friend, the gentleman from California, it is to the especial advantage of the employee as well as the employer that actions of this character be commenced within as short a period of time as possible.

Mr. COUDERT. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I yield to the gentleman from New York.

Mr. COUDERT. Is there not a further fundamental distinction in addition to those that the gentleman has just mentioned that characterize this kind of action and distinguish it, to wit, the fact that the obligation is continuing and cumulative, and that is what is so important in the building up of this great accumulation of funds, and therefore an additional reason for shortening the period of the statute, and the further fact that the statute of limitations of one year really means that you are allowing the employee to recover for a whole year.

Mr. SPRINGER. May I say to my friend that he is entirely correct and

I wish to thank him for that observation. That is an additional reason and a potent reason for that limitation. In this pending bill we have not sought to cut off or disallow any one whose right of action had accrued and the statute of limitations had run against it, but we grant 6 months' additional time for the bringing of that character of action. Remember, that is just the filing of his suit. His case need not be disposed of within that period of 1 year.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. MICHENER. Mr. Chairman, I yield the gentleman two additional minutes.

Mr. SPRINGER. That refers, only, to the filing of the action and not the trial of it; not to the completion of it; not the rendition of judgment in the case, but all the person who has a claim of that character has to do is to file his action in court within that period of 1 year and that, to my mind—and I feel convinced in the minds of all those within the hearing of my voice or a majority of them at least—is ample and sufficient time. I, too, want to protect the employee. On the other hand, I want to protect the employer. I want to be entirely fair as between those two groups in matters of this kind. But since we have granted the additional time where a cause of action has expired under this particular statute, where the 1 year has passed, we have granted 6 months additional time in which to file the action, and then those actions which accrue hereafter, those should be filed within 1 year from the date of their accrual, it would appear to be ample time in which to act. I hope, after having considered this measure, having gone through it step by step, having taken up the various provisions in it, that the Members of this body will see fit to approve this measure as they approved H. R. 2788 in the Seventh-ninth Congress, and that we will have adopted a yardstick upon which the people of this country can stand and rely respecting actions of this particular character. With the present large number of pending suits, this is a very important subject—the American people are looking to Congress for relief—and our Government seeks relief from the huge liability it may incur unless the pending measure is adopted by the House. Let us assume our responsibility in this instance.

The CHAIRMAN. The time of the gentleman from Indiana has again expired.

Mr. CELLER. Mr. Chairman, I yield 10 minutes to the gentleman from Tennessee [Mr. KEFAUVER].

Mr. KEFAUVER. Mr. Chairman, this bill finds many of us, I am sure, in somewhat of a dilemma as to the action we should take and the way we should vote on it. I say very sincerely that as far as I am concerned I have no sympathy with the great majority, 90 percent, of the portal-to-portal lawsuits and claims that have been filed. I do not think employees generally or anyone else, for that matter, are going to win any benefit that will be very lasting, substantial, or wholesome, by a windfall resulting from some technical provision that they might run across which enables them to

bring a suit. I realize also that for the good of the employees as well as the employers, industry is entitled to know how they stand. An employer is entitled to know what his liability is and not have to worry about a possible contingent liability that may arise years later. Also the employer would not be in a very good position to bargain with his employees for higher wages if he thought he might be presented later with portal-to-portal suits in large amounts. I am sure most Members of the House feel the same way. But the question presents itself as to whether in trying to remedy the situation about portal-to-portal suits we are doing just that or are going into an entirely different matter and emasculating the Bacon-Davis Act, the Wage-Hour Act, and the Walsh-Healey Act.

I hope that before the final vote comes on this bill the committee or the sponsor, the gentleman from Iowa [Mr. GWYNNE], who is a very capable lawyer and for whom I have the highest respect—I think he wants to be fair about the matter—will consider and will agree to some amendments that will allay our fears that we are going way beyond what we are setting out to do, namely, to make impossible the large majority of portal-to-portal suits we have had recently.

I want to address my remarks particularly to two provisions of the pending bill. I think these need some amending and some further consideration before we enact them into law. First, section 2 (f). Some method should be found for the purpose of enabling a compromise of existing portal-to-portal suits under safeguards, but the thing I am fearful about in connection with section 2 (f) is that it not only applies to pending claims, but sanctions the compromise of future claims. You will notice the language, "any claim," which of course means all claims. It permits the settlement of all future claims that may arise under the Fair Labor Standards Act, the Walsh-Healey Act, and the Bacon-Davis Act. In this respect I think it goes far beyond what is necessary to meet the present portal-to-portal situation. It opens the door to flagrant violations of the wage-and-hour laws by those employers who wish to take unfair advantage of their employees and competitors.

In enacting the wage-and-hour laws, Congress intended to insure decent wages and hours to those workers in American industry whose economic bargaining position is too weak to enable them to secure those standards for themselves. By the same legislation, Congress intended to protect fair-minded employers who are willing to establish decent wages and hours against the unscrupulous competition of chiselers. To permit the compromising of any claim arising under these laws is to invite these chiselers to pressure their employees into settlements which may once again subject those employees to the same sweatshop conditions they were forced to endure before these laws were enacted. Note, if you will, that this bill not only sanctions compromises where there exists a bona fide dispute of fact as to the number of hours worked or as to the rate of pay, but, if I read this bill correctly, it sanctions all compromise settlements,

whether or not such dispute of fact exists, and regardless of the extent to which an employer has failed to comply with the act. An employer is free to pay less than the statutory wages, waits until an injunction or employees' suit seems imminent, and then makes every effort to compromise his way out of the violation. Having settled that claim he is free to repeat the process ad infinitum. And the act would no longer be uniform in its application, for this provision would give a distinct competitive advantage to an employer whose employees are more willing to accept a compromise of their claims than the employees of his competitors.

Let us consider human nature in these matters. If an employer is paying less than the minimum wage, and he takes a petition or a release or settlement blank around to his employees, the employees are usually going to sign it, particularly if they are not members of a bargaining unit. Frankly, I am very much afraid that this is going to give the unscrupulous, chiseling employer a distinct advantage over the one who wants to follow the real intent of the wage and hour law.

Another provision which I hope will be amended is section 3, which reads:

No action or proceeding of any kind whether or not commenced prior to the effective date of this act, shall be maintained to the extent that such action is based upon failure of an employer to pay an employee for activities heretofore or hereafter engaged in by such employee other than those activities which at the time of such failure were required to be paid for either by custom or practice of such employer at the plant or other place of employment of such employee.

Let us see what that does. In the committee, incidentally, I offered an amendment to include the word "lawful" before the words "custom or practice." The amendment was voted down. The provision as it stands would enable two plants side by side manufacturing the same product to have different practices to the extent where one could have a custom of having its employees work four extra hours and the other would not have that advantage and nothing could be done about it. Therefore, it would do away completely with uniformity in the various industries of the Nation even though they may be manufacturing the same products and also be in the same locality.

The gentleman from New York [Mr. KEATING] offered an amendment providing that this custom or practice should be that practiced by the industry in a particular locality. That would help to a certain degree, but that amendment unfortunately was not adopted.

Suppose there were a custom or practice in a particular industry over a long period of years for the employees to work eight extra hours a week. As long as that employer could get employees who were willing to work in compliance with that custom, there is nothing that could be done about it. Competitors starting in a new business could probably only get employees to work 40 hours a week, whereas the custom would enable the competing industry to work 48 hours a week.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. HOLIFIELD. Is it not true that the old sweatshop conditions that existed, for instance, in the needle trades, were the result of competitors trying to compete on a full-labor market or a surplus-labor market where the competitors would hire employees at a lower price in order to make a competitive article cheaper? Thereby the whole industry would be in chaos because of the competitive practice.

Mr. KEFAUVER. That is my understanding of the matter.

Mr. HOLIFIELD. Such language is certainly new language.

Mr. KEFAUVER. But mere "custom or practice" might mean anything in any industry.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. CELLER. Mr. Chairman, I yield five additional minutes to the gentleman from Tennessee.

Mr. KEFAUVER. Mr. Chairman, how do you establish a custom or practice? Suppose a new industry is starting and it proclaims "Our custom here is to work 10 hours overtime per week, that is the practice."

I do not know whether it must have been a long-existing custom or practice or whether it can be one that is newly started. There certainly should be some protection to the employer who wants to be fair, who really wants to carry out the intent of the act.

But even more dangerous than the custom or practice provision is the next clause of section 3:

Or by express agreement at the time in effect between such employer and such employee or his collective-bargaining representative.

In other words, suppose the employer and the employee sign an express agreement that he would work 10 hours above the maximum week, or 60 hours a week; no suit could be brought about it. They would have a perfect right to make that agreement I assume for it does not say that it is prohibited. It would be a lawful agreement. It does not say it must be an agreement in compliance with existing statutes, with the wage-and-hour law, but it can be any kind of agreement and the employee would be unable to do anything about it.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield further on that point?

Mr. KEFAUVER. I yield.

Mr. HOLIFIELD. Is it not true that an employer could, for instance, make an agreement with a minority group of 10, 15, or 20 employees, get them to sign an agreement and then use that as a means of enforcing those contract terms upon the majority of his employees?

Mr. KEFAUVER. That could well be one of the results. Here would be plant A making hosiery, complying with the Wages and Hours Act, but right across the street would be plant B which entered into a written agreement with its employees to let them work 10 additional hours a week for the same wage. Under this provision nobody could do anything to prevent it, to prohibit it by injunction, or to collect any wages because of the

10 hours' overwork. That is not fair to plant A that wants to comply in good faith with the provisions of the wage-hour law.

In the committee I had understood that the sponsor of this bill was going to give some consideration to a suggestion made by the gentleman from New York [Mr. KEATING] relative to an amendment to make the practice in any one locality uniform. I wonder if I could inquire of the chairman of the subcommittee or of the committee whether such amendment is going to be accepted?

Mr. MICHENER. Mr. Chairman, the chairman of the subcommittee stepped out, but I believe the policy of the majority of the committee will be to vote for the bill. All amendments, however, will be considered. I regret that the gentleman now addressing the House—a member of the committee—was not present when this matter was discussed in the committee, because if he had been he would not ask the question he now asks on the floor of the House.

Mr. KEFAUVER. I was present at the time the gentleman from New York [Mr. KEATING] offered his amendment to have the practice or custom uniform in any given locality. He was finally persuaded to withdraw his amendment on the understanding that the subcommittee or the sponsor of the bill was going to consider some language to take care of the situation.

I see the gentleman from New York [Mr. KEATING] here. I might inquire if that was not his understanding at that time.

Mr. KEATING. I prefer to have the chairman of the subcommittee to speak for himself. I do not think I should be called upon to answer a question of that kind.

Mr. MICHENER. If the gentleman will permit, I can answer that question. After that discussion to which the gentleman refers, this matter was discussed in the committee, and, as I think the gentleman from New York [Mr. KEATING] knows, it was the opinion of the committee that the language in the bill should be carried in the bill. So that the bill represents the views of a majority of the committee, as it is written. Of course, the gentleman has the privilege of offering his amendment.

Mr. KEFAUVER. The gentleman will remember I offered an amendment to insert the word "lawful" before the words "custom and practice." At the same time, the gentleman from New York [Mr. KEATING], or before that time, had made objection that this would give advantage to one industry, or might not provide uniform practice among industries in the same locality. So he offered his amendment to make it the customary practice of the industries in that locality.

Mr. MICHENER. Yes; but both amendments were voted down.

The CHAIRMAN. The time of the gentleman from Tennessee [Mr. KEFAUVER] has expired.

Mr. MICHENER. Mr. Chairman, I yield the gentleman two additional minutes.

Permit me to say the amendment was offered by the gentleman from New York [Mr. KEATING], as well as the amendment



by the gentleman from Tennessee [Mr. KEFAUVER], but they were not accepted by the committee. The committee should not be criticized by the gentleman who happened to offer an amendment which the committee did not think was wise. The committee should not be criticized if it did not accept his particular amendment.

Mr. KEFAUVER. I am not criticizing the committee, but I think I am stating the facts correctly in saying that the gentleman from New York [Mr. KEATING] offered his amendment. Then, because objection was raised to that amendment on the ground that it should be worked out very carefully as to phraseology, it was stated at the time the bill was reported out that the sponsor of the bill would give further consideration to the matter and he was hopeful that something could be devised that would take care of the objection of the gentleman from New York [Mr. KEATING]. I am not asking the gentleman from New York whether that is correct or not, but that is my impression.

Mr. KEATING. May I say to the gentleman that my understanding of what went on in committee was that I offered the amendment and it was rejected, and that is all there was to it. The majority of the committee felt that the amendment should not be adopted.

The CHAIRMAN. The time of the gentleman from Tennessee [Mr. KEFAUVER] has again expired.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentlewoman from California [Mrs. DOUGLAS].

Mrs. DOUGLAS. Mr. Chairman, I shall vote against this bill. I will vote against it despite the fact that I am convinced, as the gentleman who has just spoken was convinced, that a majority of the suits now before the courts are unjustified.

I shall vote against the bill because I think it goes far beyond what a simple portal-to-portal bill should encompass. I agree with the gentlewoman from New Jersey [Mrs. NORRIS] that it strikes at the wage-hour law. I think that has been proven conclusively this afternoon. I am not going to burden you with a repetition of the facts about the statute of limitations or the part of the bill that deals with custom or practice as a definition of "work."

I shall talk about what really is worrying us. Why has this bill been introduced? As one of the Members said, "This bill was introduced because it was felt that portal-to-portal suits now before the courts are in such great number, amounting to \$5,000,000,000, that they are a threat to the financial and economic stability of the country."

We are all agreed that we want a sound and stable economy. That is right. But we are not going to insure soundness or stability with this bill. What we do insure is the destruction of effective enforcement of the Fair Labor Standards Act. If it is portal-to-portal pay which we are trying to regulate, why do not we have a simple portal-to-portal bill before us.

One of the Members referred to the author of the bill as having done a

monumental work in the writing of this bill. I wish this afternoon that a monumental job had been done or was being done by Congress on housing. I wish that a monumental job had been done or was being done to keep down the cost of living. I wish today that a monumental job was being done to deal with the facts of living as they are at the grass roots. If there had been any real understanding of the working and living problems confronting one-third of the men and women of America, we would not have a great number of unwarranted suits before the courts today. Neither passing this bill nor any other restrictive labor legislation, legislation for instance which would prohibit men and women in this country from striking, will solve the problem of living costs that is growing day by day and becoming more explosive throughout the country.

How do we get a sound economy? We get a sound economy only if we have three factors in operation—full production, full employment, and sound consuming buying power.

We came out of the war with a sound, healthy economy. Today there are grave danger signals which we must recognize.

What are these danger signals? Let's look at what happened in the twenties.

Between 1924 and 1929 profits for all corporations after taxes increased from \$4,000,000,000 to \$7,000,000,000, or 72 percent.

The output per man-hour in manufacturing increased 35 percent. Wages increased only one-half cent per hour per year. As a result, consumer purchasing power did not keep up with production. The result of this combination of facts was the crash in 1929—and the tears of 1931.

The same danger signals which lead up to vanishing markets, closed factories, bread lines are present today.

From 1942 to 1945, the average corporation profit was \$9,500,000,000 and the peak wartime profit was \$9,900,000,000.

For 1946, corporation profits, after taxes, will run to \$11,800,000,000.

Estimated 1947 profits, before taxes, for manufacturing corporations, are estimated at fifteen billion five hundred

million and would allow seven billion seven hundred million for wage increases and leave sufficient profits, after taxes, to equal those of the war years and twice those of prewar years.

But wages are not keeping up to a point where a sound consumer market can be maintained to sustain these profits.

I would like to insert in the RECORD, at this point, some interesting figures from Business Week for February 15, 1947, which show that buying power in this country is decreasing:

#### HOW REAL INCOME OF EMPLOYEES HAS CHANGED

The war and its aftermath have revolutionized the United States standard of living. But rising prices and higher taxes obscure both the extent of the change and the degree to which various groups have shared its benefits.

The economics staff of Business Week has attempted to remove these obscurities and to show below how the real income of those at work in various parts of the economy has shifted. To this end income and employment taxes have been deducted from estimates of weekly pay envelopes for certain key dates. The amount remaining has then been converted into dollars of fixed purchasing power, with prices paid by consumers in 1939 as the basic yardstick. The results are startling.

#### GAINS CUT

With few exceptions, higher wages and more stable employment have lifted workers to a new plateau of real income since 1939. But rising prices and decreased overtime during 1946 cut their gains. Moreover, wide disparity exists in the way different groups fared.

The bituminous-coal worker leads the manufacturing and mining group; his average weekly real income is 62 percent over 1939, partly because of a longer workweek.

And at the opposite end of the scale, the public school teacher and others working in public education suffered a decline in real income that averaged almost one-fifth.

#### SIGNIFICANT STORY

In one sense the data presented are misleading—the same people did not always stay in the same jobs. And a man usually moved to better-paying work.

But in spite of this shortcoming of the data, and the fact that the statistics in each instance are an average of varying rates of pay within the industry, Business Week believes this table tells a significant story of relative change in the economic well-being of the Nation's working population.

	Average weekly income available for spending in terms of 1939 dollars			Percent change in real income available for spending		
	1939	Mid-1945	Autumn, 1946	1939 to mid-1945	Mid-1945 to autumn 1946	1939 to autumn 1946
<b>Manufacturing industries:</b>						
Iron and steel.....	27.20	36.50	31.50	+34	-14	+16
Electrical machinery.....	26.80	35.00	30.80	+21	-12	+15
Machinery, except electrical.....	29.00	38.40	32.90	+32	-14	+13
Automobiles.....	32.60	38.20	33.10	+17	-13	+2
Transportation equipment except autos.....	30.20	41.90	33.90	+39	-19	+12
Nonferrous metals.....	26.50	35.50	31.00	+34	-13	+17
Lumber.....	18.90	25.00	25.40	+32	+2	+34
Furniture and finished lumber products.....	19.80	27.50	27.10	+39	-2	+37
Stone, clay, and glass.....	23.70	30.10	28.60	+27	-5	+21
Textile products.....	16.70	23.50	24.70	+41	+5	+48
Apparel.....	18.00	22.70	23.80	+26	+5	+32
Leather and products.....	19.00	26.40	24.00	+39	-9	+26
Food manufacturing.....	24.20	29.80	28.30	+23	-5	+17
Tobacco products.....	16.70	23.00	23.90	+38	+4	+43
Paper and products.....	23.50	30.40	29.20	+29	-4	+24
Printing and publishing.....	32.10	34.20	33.60	+7	-1	+6
Chemicals.....	25.30	33.20	29.20	+31	-12	+15
Petroleum and coal refining.....	32.30	41.00	34.00	+27	-17	+5
Rubber products.....	27.60	37.30	32.30	+35	-14	+17
Miscellaneous.....	24.20	32.20	28.90	+33	-10	+19

	Average weekly income available for spending in terms of 1939 dollars			Percent change in real income available for spending		
	1939	Mid-1945	Autumn, 1946	1939 to mid-1945	Mid-1945 to autumn 1946	1939 to autumn 1946
Mining industries:						
Anthracite coal.....	25.40	34.70	37.90	+37	+9	+49
Bituminous coal.....	23.60	36.60	38.30	+55	+5	+62
Metal.....	27.80	33.60	31.40	+21	-1	+13
Nonmetals and quarrying.....	21.40	32.00	30.80	+50	-4	+44
Crude petroleum.....	33.80	38.60	34.60	+15	-11	+2
Transportation.....	31.40	37.20	35.50	+18	-5	+13
Public utilities.....	32.10	33.60	31.50	+5	-6	-2
Finance.....	31.20	32.60	30.00	+4	-8	-4
Service.....	16.20	21.80	20.50	+31	-6	+27
Construction.....	24.10	36.70	33.50	+52	-9	+39
Retail trade.....	21.00	22.00	21.50	+5	-2	+3
Wholesale trade.....	29.60	33.20	31.50	+12	-5	+6
Federal Government (civilian).....	38.80	42.60	35.50	+10	-17	-9
State and local governments.....	25.60	23.80	23.50	-7	-1	-8
Public education.....	26.10	22.50	21.00	-14	-7	-20
Agriculture and related industries.....	7.60	14.90	14.50	+96	-3	+91

Data are estimates by Business Week based on information published by the Department of Labor and the Department of Commerce. Because statistical adjustments of the character applied to the basic data leave results that are only approximations of the true averages, the statistics for weekly income available for spending have been rounded out to the nearest 10 cents and in some cases to the nearest 50 cents. Thus, the figures for mid-1945 and autumn 1946 are of use chiefly as an indication of the general magnitude of the change in real income.

The income of the wage earner has gone down in 1946 from 1945. True, the income of the wage earner in the country in 1946 is higher than it was in 1939 but we had millions of unemployed in 1939, too.

Goodness knows, we do not want to go back to that.

The average weekly earnings by production workers today cannot sustain sufficient buying power to continue full production and full employment. Today 97 percent of the working population is employed and that is the way we want to keep it.

The average weekly earnings by production workers today cannot provide a decent standard of living, however, with prices what they are.

The Heller budget from the University of California for a family of four in October 1946 was \$70.52 a week. The average weekly earnings by production workers was \$45.83. These average weekly earnings have dropped from January 1945 when they were \$47.50 and the buying power in terms of 1945 dollars was down to \$39.27 as measured by the Bureau of Labor Statistics Price Index.

The minimum character of the Heller budget is evident in that it provides one overcoat for the wage earner every 6 or 7 years; a new suit once every 3 years; one winter coat for the wife every 4 years, and two regular dresses and two house dresses each year.

In the food line, it provides such items as one-fourth pound of bacon, 2 dozen eggs, 1 pound each of butter and margarine a week. No choice cuts of meat allowed.

We can expect if we allow the wages in the country to continue to take a downward spiral there will again be unemployment, because the great mass purchasing power of this country does not come from the small group at top where excessive profits have been made and are being made. It comes from the great mass of American people about whom, incidentally, we are talking today. The relative change in the economic well-being of the Nation's working population is significant.

We cannot ease our conscience in this attack upon the Fair Labor Standards

Act as one gentleman did by suggesting that this bill seeks to protect 140,000,000 people against a small handful of willful, unreasonable citizens.

There are 15,000,000 organized working people in the country. This figure does not include their families. You can fix the figure any place you want to—some place around forty-five to fifty million people.

The CHAIRMAN. The time of the gentlewoman from California has expired.

Mr. CELLER. Mr. Chairman, I yield the gentlewoman two additional minutes.

Mrs. DOUGLAS. Mr. Chairman, we are not talking about a few people here, as has been suggested. We are talking about forty-five or fifty million people. That is quite a handful.

When we contemplate voting out a bill which will undermine the Wages and Hours Act we are jeopardizing the earning power of millions of American people. As a matter of fact we are also jeopardizing the earning capacity of unorganized labor.

When the buying power of one-third of the people goes down, what happens? Production goes down. When production goes down, what happens? Employment goes down. That is what this Congress should be concerned with.

Full production, full employment, sound consumer buying power alone will keep our economy sound and healthy.

If the economy is sound and healthy, that is what will keep "isms" out of this country. People who have roofs over their heads and some security do not go down sidetracks. You can scream your head off, you may wrap the flag around yourself and talk about democracy until you are deaf, dumb, and blind, but if we allow a great segment of our people to be put into a strait-jacket where they cannot strike, where they cannot protest, where they are virtually slave labor and are required to live on less than they can live on, we are going to have trouble.

There is the beginning of trouble in this bill. I question no one's motives at all, but I think there is a lack of vision here today; lack of vision, just as there was when the Price Control Act was

wrecked, so that prices have gotten out of line. And what was that but an open invitation to strikes in this country? If people cannot live on what they make, they have to protest; that is simple, and everybody knows that prices are still rising, and anybody that knows anything about conditions back home knows that the people do not have enough roofs over their heads today, and I say that that is what we should be concerning ourselves about.

Mr. MICHENER. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. JENNINGS].

Mr. JENNINGS. Mr. Chairman, the purposes of and the necessity for this bill are set out in a finding of facts which the committee made upon evidence heard in support of the provisions of the bill. These findings are set forth in section 1 of the bill.

Now, ordinarily \$5,000,000,000 worth of lawsuits are not held in abeyance for months and years if the persons bringing such suits have a genuine cause of action. A man is prone to forget his obligations to others, but he rarely forgets the obligations of others that are due him. Overnight out of the blue this unexpected avalanche of suits confronted the employers of this country.

Now, let us look at these suits in the light of our common sense, our experience, and what we know about human nature. We all know that if these men who are bringing these suits had had a valid cause of action, they would have brought them when their causes of action accrued. The percussion cap that set these suits off was the Mount Clemens Pottery Co. case, in which the Supreme Court held that the workers were entitled to, well—portal-to-portal, or, as Judge Picard finally put it, pillow-to-pillow pay. In holding that the employees of this company were entitled to pay for walking on the company's premises and for the performance of certain activities preliminary to the beginning of their day's work, the Supreme Court held:

It follows that the time spent in walking to work on the employer's premises, after the time clocks were punched, involved "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business" (*Tennessee Coal Co. v. Muscoda Local* (321 U. S. 590, 598); *Jewell Ridge Co. v. Local No. 6167* (325 U. S. 161, 164-166)). Work of that character must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or contract.

I approach this subject on the theory and on the assumption, and I believe I am warranted in assuming, that the average employer in this country and the average employee are friends and not enemies. From what I get from many employers and employees in talking to them and in the letters that they write me, the men and women who work are very much of the frame of mind of the patriarch Job, who when his supposed friends stood around his bedside of affliction and advised, "Job, curse God and die," and Job said in reply, "O God, deliver me from my friends."

The laboring people may well pray to be delivered from their professed friends,



those who live by the sweat of their tongues, and not by the sweat of their brows.

Now, let us see what this bill proposes to do. It provides that a laborer who thinks he has a claim against his employer can settle; he can compromise. Why should not anybody 21 years of age, of sound mind, be permitted to settle a controversy or a claim that he has? He does not need an agitator as his guardian. He is not asking for that. This bill makes it lawful for an employer and his employee to fairly settle and compromise their differences. Then it gives the employer the right, when he is confronted with one of these suits, to rely upon the fact—

That the action or omission complained of was done or omitted in good faith consistent with, required by, or in reliance on any decision of a court of record in connection with which such employer was a party in interest, or any administrative regulation, order, ruling, interpretation, approval, enforcement policy, or practice.

There was a time when an employer or anybody in business might rely upon the law of the land as it had existed and had been repeatedly declared by the courts for 150 years, but under administrative law and practices and under the day-to-day shift in judicial interpretations of the law, and under these multitudinous rules, regulations, orders, interpretations, and explanations and other decrees that are handed down by bureaucrats with which nobody on earth could keep up, no man knows when he is acting in violation of the law. It is provided in this bill that if anybody relies in good faith upon any of these regulations, orders, rulings, interpretations, approvals, enforcement policies or practices that have been promulgated by these Federal administrative authorities, that is a complete defense, to these suits mentioned in this bill and such reliance and compliance ought to be a complete defense.

Let us see what else this bill does. It permits the court to have some latitude in assessing damages or penalties.

Mr. DEVITT. Mr. Chairman, will the gentleman yield?

Mr. JENNINGS. I yield to the gentleman from Minnesota.

Mr. DEVITT. I should like to get the viewpoint of the distinguished gentleman with reference to subsection (e) of section 2. The gentleman spoke with derogation of the rulings and the findings and the practices of the bureaucrats. Then he pointed to the second paragraph of subsection (e) and said that it provides that those rulings and practices are impregnable.

Mr. JENNINGS. No; I say that if anybody relies on them in good faith—and there is no answer to that—if somebody clothed with the power so to do issues an edict or an order having the force and effect of law, and the citizen acts in reliance upon such edict or order in good faith, such action and reliance ought to clothe him with absolute immunity from liability in either a civil or a criminal suit.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. MICHENER. Mr. Chairman, I yield three additional minutes to the gentleman from Tennessee.

Mr. RANKIN. Mr. Chairman, will the gentleman yield?

Mr. JENNINGS. I yield to the gentleman from Mississippi.

Mr. RANKIN. Right along that line, I think it might be of interest to Congress to know that on the 22d of February this news item came out of London, England:

Two thousand British Communists shouted today when William Z. Foster, head of the Red party in the United States, opened the Communist Congress here by telling them the news they all wanted to hear, that America is nearing a bust.

Mr. JENNINGS. If he will just stay over there we can all shout with joy.

Mr. RANKIN. Yes; but that is what they have been praying for, and I am not sure that it is not in the motive behind these suits.

Mr. JENNINGS. Let me make this further observation: As I said a moment ago, I approach this subject upon the assumption that employers and employees are usually friends. Most of the employers of this country are men who at one time worked for wages. Not long ago in my town a man passed away who came there 50 years ago as a young man from Alabama, without a dollar in his pocket, but he was filled with energy and industry, and God Almighty had planted inventive genius in his mind. He became an inventor. He founded a great plant that bears his name. During this war the Fulton-Sylphon plant in my city made instruments without which airplanes and submarines could not have been effectively operated. Mr. Fulton died wealthy, but he made scores of others rich and thousands prosperous.

I am never worried about what a man like that has. He shares it with others. If anybody asks me what a man leaves when he dies, I do not have to go to the office of the probate clerk to learn. He leaves all he has. There are no pockets in a shroud.

I do not want to see my country and your country, this country of the employers and employees, duplicate the performance of Great Britain in wrecking and nationalizing our system of free enterprise, based on collective bargaining. You cannot go halfway over Niagara. This bill enacted into law will end the uncertainty and financial ruin now hanging over the business of this country like the sword of Damocles. The 6 months' and 12 months' limitations within which such suits may be brought will put an end to the threat to our industry, and to the jobs of millions of our working people. Realizing the threat these suits are to the solvency of business and to the welfare of the working people, William Green, and other leaders of the American Federation of Labor, have denounced them as unwise and without merit.

This bill should be enacted as reported by the committee.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. O'TOOLE].

Mr. O'TOOLE. Mr. Chairman, the legislation before us this afternoon is typical of most omnibus legislation, a carry-all that embodies many things created and conceived out of hysteria and sired by hatred of labor. The thinking people of this country seek industrial peace so that the Nation may go forward to take its proper place in the world scene. But we are not going to achieve that goal by introducing legislation in this Congress which is strictly class legislation—legislation that is punitive in its nature with the penalties to be exacted but from one group—the workers.

Perhaps there have been mistakes in the past in some of our labor legislation, but we are not going to rectify this condition with hysterical legislation of this type which is morally unsound and philosophically dishonest.

We are attempting here to go beyond our own sphere and we are ceasing to be a legislative body and attempting to become the judicial process of our Government. We are attempting to dictate the policies that the courts of the country must follow, and we are endeavoring to interpret the laws before they have an opportunity to do so. We must be calm and we must be reasonable if we are to work out the difficulties that exist in the present labor program. We cannot do it by introducing bills of an omnibus nature which affect four or five acts of a highly controversial sort.

I certainly believe that the best thing this House can do is to defeat this measure and turn it back to the Committee on the Judiciary of the House with a proposal that both the Committee on the Judiciary and the Committee on Education and Labor make a prolonged study of the entire labor situation and also of all existing labor legislation.

Mr. MICHENER. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. KEATING] a member of the subcommittee.

Mr. KEATING. Mr. Chairman, before I speak regarding this bill, I want to express my deep gratitude to the chairman of the Committee on the Judiciary for the opportunity he gave me of serving on this subcommittee. Although perhaps not young in years, I am at least new in this House. I sincerely wish that every man and woman in this country could have been present during the deliberations of this subcommittee because they would have been gratified and heartened to learn there was not for one instant at any time injected into those deliberations any degree of partisan politics. The distinguished chairman of the subcommittee, the gentleman from Iowa, has done, and I repeat what was said before, a monumental job. The distinguished gentleman from Massachusetts [Mr. GOODWIN] and, likewise, the minority members, Messrs. WALTER, of Pennsylvania, and BRYSON, of South Carolina, worked long and hard to try to bring out a bill which is fair and just to every one. Each one of these able gentlemen labored with diligence and devoted dedication to the task in hand.

I favor the passage of this legislation, although there are two respects in which I feel amendments would improve the bill and accomplish greater fairness to all concerned which I am sure is the ultimate aim of all of us.

We are faced today with the prospect of stagnation in production and bankruptcy for industry particularly small businesses and possibly economic chaos leading to small and large businesses going to the wall and leading to men walking the streets for want of a job. On top of that we are told by the witnesses from the Government who have appeared before us that a very large amount of these staggering claims will, in the final analysis, fall on the Government itself through contract renegotiation and claims for tax refunds.

Such a situation as that, in my opinion, challenges this Congress to act. In doing so, we must be careful to be fair to everyone. I believe that this act does not deprive the laboring man of any of his legitimate rights nor emasculate the Fair Labor Standards Act or any other statute enacted for his benefit. If I felt otherwise, I would be against it.

On the other hand and along that line, although I differ with him, I have the greatest respect for my colleague the gentleman from Alabama [Mr. HOBBS], who, with admirable frankness, tells us he thinks that the Fair Labor Standards Act ought to go out of the window. If I agreed with his objective, I would favor such a direct approach. But I do not agree, and I believe that is not the intention of any of the subcommittee members who worked so hard on this bill and who, with the exception of the statute of limitations amendment with which I shall deal in a minute, reported the bill unanimously to the Committee on the Judiciary. Nor will that, in my opinion, be the effect of the bill if it is passed.

Mr. DEVITT. Mr. Chairman, will the gentleman yield?

Mr. KEATING. I yield.

Mr. DEVITT. The gentleman was a member of the subcommittee which conducted hearings, was he not?

Mr. KEATING. I was. That is right.

Mr. DEVITT. Do you recall the testimony that was presented there by certain agents of employees of the North-west Airlines?

Mr. KEATING. I do remember that; yes.

Mr. DEVITT. Does the gentleman feel that those employees would be denied coverage by virtue of the enactment of this bill?

Mr. KEATING. I was much impressed with the testimony given by those employees. I will say to the gentleman, who I know has labored long and hard in their behalf, that I do not believe the passage of this bill would injure their rights. I think the gentleman has reference to the good faith provision of the bill. In section (e) on page 4 you will note that the employer only has protection if he has acted in good faith, in reliance upon that administrative ruling. In the situation to which the gentleman refers, the employer acted in reliance on one governmental agency and then another one came along and gave a different ruling. But the employer in the

first instance, knowing there was doubt about his position, appealed to the United States Government and got indemnification. I would certainly vigorously urge in that case, if I were appearing for those people, that this action was evidence of the fact that this employer did not act in good faith and could not avail himself of the defense afforded under this subsection (e).

This bill in the first part states the findings which gave rise to it, and the declaration of policy of this Congress.

Then section 3 strikes out what I like to call the illegitimate portal claims. I agree there are probably some legitimate lawsuits pending. I feel most of them are without foundation, after hearing some 500 pages of testimony, but those which are retained in good standing by this bill are those which are based on agreements between employer and employee or his collective bargaining agent, and those which are represented by custom and practice in that industry.

At the proper time I have the feeling and shall urge that there is one class of legitimate claims to which we have not yet given the immunity to which they are entitled. That is the case of the claim based upon the custom or practice in the industry generally. We were given an instance of a case where some men moved from New York City into northern Pennsylvania and started making shirts. The girls they employed to make the shirts were required to put in little piles the various cut out parts of the shirt, the left arm, the front of the shirt, and the back, and the right arm, and the collar before they started sewing. The employer established the practice in a time of depression that he would not pay those girls for the time they were putting those items in separate piles but would start their pay only when they actually started their needles. That was contrary to the general custom and practice in the industry and it was contrary, it seems to me, to fundamental fairness and right. Such a situation, it seems to me, should not give an employer immunity. If this language were broadened to say also an action could be maintained in the case of a custom or practice in the industry, then we would give protection to an employee who was being overreached and at the same time would give protection to the vast bulk of honest, honorable employers who do not try that kind of abuse and are subjected to unfair competition from those who do.

The other amendment which I feel would help make this bill fairer is one to increase the period of the statute of limitations. In my State—New York—an employee now has 6 years within which to maintain an action such as this. I do not for one moment—and I want this most clearly understood—charge any unfairness upon the part of anyone who feels that a 1-year statute is right. The gentleman from Iowa has a 2-year statute in his State and the gentleman from Indiana has a 1-year statute in his State. I can well understand why they with the utmost sincerity favor a 1-year statute.

But the gentleman from Illinois [Mr. SABATH] said earlier in the day that when we were elected to Congress we told labor we were going to be fair. With that I

agree, although I cannot go along with his rationalization wherein he contends that all the Republicans who support this bill are venal and the many Democrats who share the same view are uninformed. But I want my conscience in voting on this bill to be absolutely clear. I want to be entirely and unquestionably fair, as I see the problem, and in my case, coming from a State which now has a 6-year statute, I cannot convince myself that I will have been fair in this matter if I go too much below the Nation-wide average, which is now 3.8 years.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. MICHENER. Mr. Chairman, I yield two additional minutes to the gentleman from New York.

Mr. KEATING. It is true—and this should in all candor be said—that there are some 13 States which have dealt with this precise problem and have passed statutes of limitation applicable only to this type of action. Those statutes run from 6 months to 2 years.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. KEATING. I yield.

Mr. HALLECK. That was the question arising in my mind, whether the 6-year statute of limitations in New York State would be applicable in a case where an employee alleged he had not been paid in the regular sort of routine as distinguished from this special statutory provision.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. KEATING. May I answer the gentleman from Indiana first?

In New York, an employee would have 6 years within which to bring an action under the Fair Labor Standards Act as well as to bring an action at common law for unpaid wages. Since there is no special statute applicable, as is true, I understand, in some 35 States, the general statute applicable to action ex contractu would govern.

What I started to indicate was that many States, of which mine is not one, have legislated specifically for actions under this law and those statutes of limitations run from 6 months to 2 years.

Mr. JENNINGS. Mr. Chairman, will the gentleman yield?

Mr. KEATING. In just a moment.

But, as I indicated a moment ago, the Nation-wide average is 3.8 years. In using that figure I refer to all of the applicable statutes, Nation-wide, which include the 13 which have specifically dealt with this law and others where a common law right of action would govern their recovery.

Mr. JENNINGS. Mr. Chairman, will the gentleman yield?

Mr. KEATING. I yield to the gentleman from Tennessee.

Mr. JENNINGS. This 1-year limitation applies to actions brought under this or some other Federal act. The 6-year statute of limitations in the gentleman's State applies to common-law actions, it applies to suits involving unpaid wages, for instance.

Mr. KEATING. The gentleman is partially correct. I may say to the gentleman from Tennessee that at the pres-



ent moment the 6-year statute would apply to both a common-law action for unpaid wages and an action under the Fair Labor Standards Act in my State. But there is a distinction between the two types of actions, I recognize that. What I say is that if we favor the Fair Labor Standards Act as such then we must admit that there are legitimate claims under that act and, it is important to bear in mind, all illegitimate claims have presumably been eliminated by the good-faith provisions of this bill. Therefore, it seems to me we should not reduce the statute of limitations on legitimate claims under the Fair Labor Standards Act to such an extent as this bill contemplates.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. KEATING. I yield to the gentleman from New York.

Mr. CELLER. I am very happy the gentleman has taken the position he has taken. It might be well to say right here that in the State of South Carolina there was a bill passed providing for a 1-year limitation, 1 year in which an action for wages would have to be brought under the Fair Labor Standards Act. I am informed this statute, which was enacted in 1945, was declared unconstitutional by the Appellate Court at Richmond on the ground 1 year was insufficient.

The CHAIRMAN. The time of the gentleman from New York has again expired.

Mr. MICHENER. Mr. Chairman, I yield the gentleman one additional minute.

Mr. KEATING. I may say to the gentleman from New York in the interest of clarity, it is not my understanding that the basis of unconstitutionality in that case was the short period of time involved but was the fact it was discriminatory to allow a different and shorter length of time in an action under such a Federal statute as against other types of actions of similar character under State statutes.

In conclusion, I respectfully refer my colleagues to the arguments advanced in the additional views of the gentleman from Pennsylvania and myself in the committee report for supporting a statute of limitations in excess of 1 year, and I favor the passage of this bill, as I said in the beginning, feeling only that these suggested amendments will help to make it fairer, both to the workingman who has a legitimate cause of action and to the ethical employer who should be protected from the unfair competition of the minority who would seek to exploit their employees.

Mr. MICHENER. Mr. Chairman, I yield such time as he may desire to the gentleman from California [Mr. WELCH].

Mr. WELCH. Mr. Chairman, in 1938, I participated in a legislative battle to secure a minimum wage for underpaid American workers. We fought for a bare minimum necessary to safeguard the worker and his family from privation and want. As the ranking minority member of the Committee on Labor, I was among those standing steadfast until our cause carried through to victory. I sensed a feeling of tremendous and lasting accomplishment when, finally, after

2 years of legislative investigation and discussion, the Fair Labor Standards Act of 1938 was forced to the floor by a petition on the Speaker's desk and was passed by a substantial majority.

The reason for the Fair Labor Standards Act was stated in the act itself. Congress found that in interstate industries there were labor conditions detrimental to minimum standards of living. Production and sale of goods throughout the country spread and perpetuated these conditions among the workers of the country. Fair wages paid by fair employers were undercut by the unscrupulous; the cutthroat competition of chiselers forced prices and wages downward. The result was sweatshop labor, particularly for women and children.

These findings were not merely pulled out of the air. They were based on harsh and sometimes cruel pathetic facts presented on page after page of committee reports of lengthy committee hearings on this measure.

To correct these conditions without hardship, Congress established a minimum wage of 40 cents for each hour an employee was permitted to work. Prior to the establishment of the minimum-wage law, it was brought out in the testimony that women were working under sweatshop conditions almost within the shadows of the Capitol itself for \$6 a week; they worked 10 hours a day 6 days a week to earn this pittance.

Congress decreed that this modest rate would go into effect only after 7 years of lower rates. Then, in order to correct the disastrous effects of constant toil for long working hours, the act provided for payment of one and one-half times the regular rate of pay for work in excess of 40 hours a week.

Now let us take a look at the pay envelope of the worker who receives the bare minimum guaranteed by the act. At the end of a 40-hour week it would contain the princely sum of \$16, before taxes. At the end of a 48-hour week it would contain \$20.80, before taxes. That would not go very far toward supporting one person, much less a family, under present-day living conditions.

Today this House is asked to consider new legislation amending that act and designed to correct certain injustices which its provisions have inflicted upon the American employer. These amendments have had the initial objective of protecting from employee wage suits brought under the act to recover for the time spent in walking from the gate of a plant to the work bench within the plant. If this were the sole result, I do not believe that any fair-minded man would take issue. But they go much further. H. R. 2157 would, in a few sweeping words, destroy utterly the basic guarantees so solemnly enacted into law in 1938. Millions of defenseless workers would again be left to the mercies of the unfair employers—powerless to defeat a vicious cycle which caused Congress to act in their protection.

I refer to section 3 of H. R. 2157. This section defines work, not only for the purpose of the Fair Labor Standards Act of 1938, but also for the purpose of the Davis-Bacon Act regarding prevailing wages on public works. The latter was

passed during the time I was chairman of the Committee on Labor and it was an administration measure. It gives similar definition to the Walsh-Healey Act of 1936 covering minimum wage rates under certain Government supply contracts. Thus this bill affects virtually every existing Federal minimum wage control.

This, ladies and gentlemen, is what will happen under amendments now before you seemingly designed solely to solve the limited issue of portal-to-portal pay. Standards, by now long accepted in industries as a whole, would meet renewed challenge from the cut-throat competitor. Goods produced at unjustly low wages would again flow unimpeded through the channels of commerce, with disastrous effects upon every market they touch. The floor under wages for which we fought in 1938 will have disappeared by 1948 thereby endangering the American standards of living.

May I remind you that you are not only dealing with the pay of the organized worker, you are dealing with the lives and health and the fortunes of over 50,000,000 of law abiding, home loving, American wage earners, organized and unorganized.

Neither these people nor the American public have given us license to impair or destroy the laws of this country which protect a living wage under the rally cry of portal-to-portal pay.

If our object is to protect employers from the possible disastrous effects of wage suits under the Fair Labor Standards Act for pay which, until a few months, neither workers nor employers nor the enforcement agencies of Government conceived as due under the act, let us direct our energies to this problem alone. I am convinced that a reasonable solution can be reached, and that solution does not entail the destruction of every protecting minimum wage standard which the American people have after a long uphill fight succeeded in writing into law.

Mr. MICHENER. Mr. Chairman, I yield such time as he may desire to the gentleman from New York [Mr. JAVITS].

Mr. JAVITS. Mr. Chairman, I ask unanimous consent to revise and extend my remarks and include certain amendments to this bill which I will offer tomorrow.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. JAVITS. Mr. Chairman, the following are the amendments to be offered to H. R. 2157 by me:

[Matter proposed to be stricken in black brackets; new matter in italics]

On page 4, line 15:

"(e) In any action, whether or not commenced prior to the effective date of rules and regulations to be promulgated by the Secretary of Labor under this act, the employer may plead and prove that the act or omission complained of was done or omitted in good faith consistent with, required by, or in reliance on any decision of a court of [Record] final appeal in connection with which such employer was a party in interest, or any administrative regulation, order, ruling, interpretation, approval, enforcement policy, or practice.

"Such a defense, if established, shall be a bar to the action, notwithstanding that after such act or omission, such decision, administrative regulation, order, ruling, interpretation, approval, enforcement policy, or practice is modified, rescinded, or determined by judicial authority to be invalid or of no legal effect.

"The Secretary of Labor shall have power to make, issue, amend, and rescind such regulations and orders as are necessary or appropriate to carry out any of the provisions of the Fair Labor Standards Act of 1938. The regulations and orders of the Secretary of Labor shall be published in the Federal Register and shall be effective upon publication or at such later date as the Secretary of Labor shall direct. No provision of the Fair Labor Standards Act of 1938 imposing any liability shall apply to any act done or omitted in conformity with any regulation or order of the Secretary of Labor notwithstanding that such regulation may, after such act or omission, be amended or rescinded or be determined by judicial authority to be invalid for any reason.

"Sec. 3. No action or proceeding of any kind whether or not commenced prior to the effective date of this act, shall be maintained to the extent that such action is based upon failure of an employer to pay an employee for activities heretofore or hereafter engaged in by such employee, covered by a collective bargaining agreement then in effect, other than those activities which at the time of such failure were required to be paid for either by custom or practice of such employer at the plant or other place of employment of such employee or by express agreement at the time in effect between such employer and such employee or his collective-bargaining representative, or upon the failure of an employer to pay any other employee for activities heretofore or hereafter engaged in by such employee, other than those activities which at the time of such failure were specifically required to be paid for either by custom or practice of the particular industry most nearly applicable to such activities, or by express agreement at the time in effect between such employer and such employee."

Mr. MICHENER. Mr. Chairman, I yield such time as he may desire to the gentleman from Ohio [Mr. VORYS].

Mr. VORYS. Mr. Chairman, collective bargaining received a paralyzing blow when our courts decided to force employers to pay wages they had never bargained for. To me, that is the nub of the portal-to-portal question. The staggering sums represented in the portal-to-portal cases that have been filed are not the results of past collective bargaining, the payments to be forced from employers by these suits are to be for time which neither the worker nor his employer considered pay time, according to the Supreme Court, which described this type of time and said it must be paid for at double the value of agreed working time, "regardless of contrary custom or contract." This decision is the most outrageous and unconscionable instance of judicial usurpation of the law-making power that I have ever seen. It is an attempt to write into the law something that Congress never intended, so as to create a liability for pay that neither workers nor employers ever intended. The result of this decision, if Congress does not act to right this judicial wrong, will be not only to enrich thousands of workers by payments they do not deserve, not only to impoverish industry by losses they could not foresee, not only to burden all taxpayers by an additional

tax load caused by the decrease in tax payments by industry, but to impoverish workers in the future who will be unable to secure increases from businesses that have been disorganized and impoverished by the results of this decision.

The Gwynne bill, in my judgment, will correct the evils caused by this decision. I want to pay my tribute to the gentleman from Iowa [Mr. GWYNNE] and the Judiciary Committee which has worked out this bill. The legislative problem involved in correcting this decision was complex and difficult, but the committee, as shown in its excellent report, has found judicial decisions and precedents for each provision of the bill. If this bill is interpreted by the courts according to recognized principles of American jurisprudence, the threat of portal-to-portal suits to our economy will be over; businessmen can face their future problems knowing that no unforeseen liability will be created for past wages; unions can proceed with collective bargaining, knowing that they are dealing with businesses not made insolvent by unexpected, court-created payments for work already done.

One danger remains. Will the courts that created this situation through invasion of the legislative field, construe this law as courts should, or will our Supreme Court once more attempt to usurp the powers of Congress by rewriting the new law? At this time we can only hope that the courts will return once more to the judicial processes that won them the respect of our people. If the courts once more throw this situation into turmoil, we will be facing a threat not only to our economy but to constitutional government. If such a threat should arise, we still have machinery under our Constitution to protect the independence of the three branches of government in our Republic. I have faith, however, that the Gwynne bill will be interpreted in such a way that it will mark the end of the assault on our economy and the lawmaking power of Congress which is involved in the portal-to-portal cases.

Mr. MICHENER. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. MCGARVEY].

Mr. MCGARVEY. Mr. Chairman, in voting to outlaw the portal-to-portal pay suits, I would like it emphasized that I am doing so in the interests of the people whom I represent. My district is a section of Philadelphia thickly populated by the workers employed in the industrial plants of the city. I have had personal contact with these men, who supported me in the recent election.

They have convinced me that they are vitally concerned regarding the future of their unions. They realize that if the unions continue to instigate such action as the portal-to-portal pay suits it will prove detrimental to the workingman whom the union is supposed to shield.

I would like it understood that I am highly in favor of unions and any measures which have for their aim the protection of the honest, decent American worker. That is why I uphold Congressman GWYNNE's bill.

Seeking damages for portal-to-portal pay could mean bankruptcy and utter

ruin to the industries sued and a resultant loss of jobs to the very workers for whom the suits were instigated.

Small businesses, such as the many which are located in my district, would be unable to pay their bills or meet their pay rolls if the suits were successful. After paying heavy damages, they would have no capital left for expansion or the creation of new jobs, a vital need in these times when we have so many veterans of World War II on the unemployment lists.

The total result, as I see it, is chaos and a downhill slide toward another depression. The people of my district put me in office to protect them and their interests. I feel that I am doing that today. They realize, as I do, that the preservation of American enterprise means a bright future for them and their families.

Mr. MICHENER. Mr. Chairman, I yield 10 minutes to the gentleman from Minnesota [Mr. DEVITT], a member of the committee.

Mr. DEVITT. Mr. Chairman, as the chairman has just said, I am a member of the Committee on the Judiciary and one of the Republican members thereof. I rise today, however, in opposition to this bill, and I intend tomorrow, at the appropriate time, to introduce an amendment to make it conform to what in my judgment would be a fair and just settlement of the problem.

I am new as a legislator, but I personally have grave doubts as to the expediency of attempting to cure all the evils associated with the administration of these labor laws in one bill. I, too, am vigorously opposed to these CIO inspired racketeering, ill-founded portal-to-portal pay suits, and I am satisfied that Mr. GWYNNE's subcommittee, in certain provisions in this bill, has amply taken care of those suits.

There is one provision in this bill to which I object very strenuously. It is section (e) of section 2 of the bill. I hope that before any Member of the House votes on this bill he will take time to read that provision not once or twice, but three or four times. I think that is one of the most dangerous provisions that has been presented during the present Republican-controlled Congress. When you read that provision this becomes apparent: What the Congress of the United States does is to say that any kind of a ruling or administrative order or regulation that was made by any kind of an administrator or bureaucrat in any of the hundreds of administrative agencies of the Government takes precedence over any judicial decision handed down by a court of the United States. That is just what we are saying in that provision. We are elevating offhand opinions of bureaucrats above the dignity of judicial decision. I am against that kind of legislation. I am satisfied that the people of the State of Minnesota whom I represent did not send me down here for the purpose of elevating the opinions of bureaucrats above the dignity of judicial proceedings.

May I tell you a little story? About 2,500 workers who live in my district were employed by the Northwest Airlines, with headquarters in St. Paul, Minn.



During the arduous days of the war, the War Department asked Northwest Airlines to operate a bomber-modification plant in St. Paul. With patriotic zeal the Northwest Airlines hired several thousand employees, and for four or five years they very efficiently operated such a bomber-modification plant.

As they started to enlarge their operations, the air-lines officials went to the regional director of the Wage and Hour Administration and said "Are we governed by the Wages and Hours Act?" The regional director said, "Yes." So they came to Washington and asked the National Director, "Are we governed by the Wages and Hours Act?" He said, "Yes." So the Northwest Airlines published notices throughout its plant which stated that employees who worked more than 40 hours a week would collect time and a half for the overtime in accordance with the act.

Then, lo and behold, another bureaucrat came along who headed the wartime railway labor panel and he said: "Why, you people are not governed by the Fair Labor Standards Act; you are governed by the Railway Labor Act. You have to pay time and a half only for all time over 48 hours a week." So the Northwest Airlines said, "Well, we will follow your opinion then."

However, so insecure did they feel at that offhanded opinion contained in a letter that they asked the War Department for legal assurance that they would be reimbursed in case the courts later held that they were governed by the Fair Labor Standards Act. The War Department gave legal assurance that they would pay judgments, attorneys' fees, and costs which might be recovered.

Well, the war is over. These employees instituted a suit about 2½ years ago to determine whether they were governed by the Fair Labor Standards Act or the Railway Labor Act. On January 18 of this year the Federal District Court in the State of Minnesota, through one of the ablest jurists in the United States, held that these employees were entitled to the protection of the Fair Labor Standards Act.

Mr. JAVITS. Mr. Chairman, will the gentleman yield?

Mr. DEVITT. I yield to the gentleman from New York.

Mr. JAVITS. Does the gentleman mean to indicate that this act will affect that judgment?

Mr. DEVITT. Yes; may I advise my colleague from New York that it will. If the gentleman will examine section 4 of this act he will find in line 14 on page 6 that this bill prohibits the courts of the United States from entertaining any suits under this act except such suits in connection with which judgment has been entered and in connection with which the time for appeal has expired. I expect that soon a judgment will be entered in this case, but the time for appealing will not have expired by the time this bill will probably be passed.

This is what happens to the 2,500 people who live in Minnesota if this bill is passed. It means that this offhanded opinion of a Federal administrator 3 or 4 years ago takes precedence over the well-reasoned opinion of a court of the

United States. It is not my intention as a Member of this great legislative body to give any kind of encouragement to the raising up in this country of the principle of man-made government. I think this last election evidenced the fact, if it did not evidence anything else, that we want in this country a government of laws rather than a government of men, and we cannot have a government of laws unless we have respect for the dignity and the decisions of courts of the United States.

I intend tomorrow to offer at the appropriate time an amendment to this bill, which in other respects I think is a laudable measure, by the terms of which all of subsection (e) of section 2 will be abolished; or, in the alternative, I will seek to amend section 4 so as to give some kind of validity to the present judgments of United States courts.

Mr. CASE of South Dakota. Mr. Chairman, will the gentleman yield?

Mr. DEVITT. I yield to the gentleman from South Dakota.

Mr. CASE of South Dakota. I am wondering in the gentleman has taken into consideration the language which appears in subsection (e) of section 2, which states that the employer may plead and prove that the act or omission complained of was done or omitted in good faith consistent with, required by, or in reliance on any decision of a court of record. In other words, subsection (e) itself, it seems to me, places first the possibility of reliance upon a decision of a court of record.

Mr. DEVITT. May I say that that is not the case. This decision was just handed down on January 18 of this year, so the employer did not rely on the judgment of a court when he failed to pay the overtime in question.

Mr. CASE of South Dakota. I was directing my question to the gentleman's general objection to subsection (e), and saying that subsection (e) itself, it seems to me, places in there the possibility of reliance upon a decision of a court of record.

Mr. DEVITT. If he is a party to the suit, but it does not apply to any other cases to which he is not a party.

Mr. KEATING. Does the gentleman feel that this employer, getting this second ruling, and then immediately going to the Government and getting from the Government an indemnification agreement, could be said to have acted in good faith in reliance on that ruling? It seems to me that when a person is acting in good faith in reliance upon something he does not, shortly thereafter, go out and get someone else to indemnify him. What does the gentleman have to say about that?

Mr. DEVITT. All employers in recent years have been in a quandary with many rulings emanating from hundreds of boards and agencies. I would not offer to presume to judge the motives of an employer because I do not think that would be proper. I am interested in seeing to it that the judgments of courts are not set aside as against the opinions of some bureaucratic agencies.

Mr. KEATING. I agree with the gentleman.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. HOLIFIELD].

Mr. HOLIFIELD. Mr. Chairman, I want to express a word of appreciation for the words of the gentleman from New York [Mr. KEATING]. I find myself in much the same quandary with regard to the statute of limitations. I happen to be an employer of labor at the present time and have been for the last 25 years in business enterprises outside of my congressional duties.

Under the present bill, an employee of mine would have 1 year to file suit against me for underpayment of wages. However, in the State of California, I would have 3 years to enter suit against that employee for over-paid wages or for money advanced to him which he, in the way of a loan, would not have had the proper time to pay back to me. It seems to me that if we want to do the fair thing about this, as the gentleman from New York [Mr. KEATING] said, we will extend the statute of limitations. I say that, in view of the fact that I realize a businessman should know his liabilities for wage payments, but at the same time the sums involved are comparatively small in relation to the total wages paid and total business transactions of most businesses.

It seems to me that in all fairness we should give the worker a little more time, where he is not aware of his rights, and give him the same privilege that the employer has to recover moneys due him from the other party.

Another part of this bill which concerns me deeply is this definition of custom or practice. I understand the Supreme Court has defined work as "physical or mental exertion controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer." Now, I do not think that particular definition is complete. I wish there were an attempt in this bill to give us a little better definition than that. I submit to you that to substitute the words "custom or practice" for this Supreme Court definition is certainly taking a step backward.

I hope an amendment is offered to eliminate that language contained in the section which uses the words "custom or practice." It in effect substitutes it for the present interpretation of "work" by the Supreme Court. If it were the custom or practice for an employer to pay for only a part of the week's work, this practice would be acceptable under this law. A new employer would be free to rewrite the law to suit himself. A competitor of mine, for instance, could start in employing people at 20 percent less than I am paying, and, of necessity, I would have to meet that competition, if it was in manufacturing or in retailing. I could not substantiate my business on a 20-percent higher wage payment. Therefore, the first thing I would do would be to cut my own workers 20 percent. In a surplus labor market it puts labor at the mercy of the lowest chiseling employer. We have tried to get away from chiseling and sweatshop practices for many years. We know it brings no

good to the employer and it brings no good to the employees. We have seen the case in the great needlework industry in New York and other populous centers, where the bundle practice of letting out work at very cheap wages, according to contract, if you please—contracts which are permitted under this bill—in violation of certain standards that are set up, such as the minimum-wage law. I think possibly it opens up the field for the old "yellow dog" contract to a certain extent. Certainly we do not want to be a party to any such practice as that.

I agree with many of the progressive Members of the House that many of these portal-to-portal pay suits are not justified. I think a law should be passed to bring justice into this condition which has arisen, but I say to you that this bill as presented certainly needs some correcting in a few instances. I hope amendments are offered tomorrow that I can vote for.

The CHAIRMAN. The time of the gentleman from California [Mr. HOLIFIELD] has expired.

Mr. MICHENER. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. DONDERO].

Mr. DONDERO. Mr. Chairman, the case which precipitated the bringing of this legislation to the floor of the House originated within a very few miles of my home in Michigan. The court that tried the case is still nearer to my home, in fact, in Detroit, and a part of Detroit is in my congressional district. It is somewhat because of a letter I received a few days ago from a person who was present in the court when this now famous pottery case from Mount Clemens, Mich., was tried, that compels me to express my views regarding it.

We have prided ourselves in this country on our judicial system. We have said to the world that here in the United States of America the poorest and humblest citizen shall have a fair trial in a court of justice, either to have his issues determined by a jury of his peers or to have his case decided by a fair and impartial judge. In fact, on the front entrance of the Supreme Court of the United States in this Capital City are inscribed four words in marble, "Equal justice under law."

I now come to this case and the trial of it. I must say from the information received, if the incident which occurred in that court had not occurred it is very probable that the chaos and confusion now confronting the United States Government and the business and industrial life of the Nation in these portal-to-portal suits, and the 2,000 cases filed in the courts involving nearly \$6,000,000,000 in claims, and the legislation before us would never have been heard from. The case was tried by a jury. The jury returned twice to announce to the court they had found in favor of the employer; that there was no justifiable ground for the suit. It was upon the second occasion that the jury emerged from the jury room that the Federal judge said to the jury, according to the letter received—and I think it had some publicity in the press—"This is a pro-labor court." The judge might just as well have said, "This court

is prejudiced and biased in favor of labor." It would have been equally vicious on the part of the judge to have said, if he had been of different mind, "This is a pro-employer court. This court is biased and prejudiced in favor of employers of industry and of business." Such a statement as the judge directed to the jury is at complete variance with the law of the land and the spirit, intent, and meaning of "equal justice under law." When he made that statement he immediately injected into this case what goes to the very root and foundation upon which our judicial system is founded, that is, a trial of law and the facts by a fair and impartial court. He removed himself from fairness and impartiality. I mention this for the reason that the type and form of government which you, my colleagues and I represent in this Chamber is under attack in this world, and anything which strikes at the integrity of our judicial system, being one of the three separate departments of the Government as founded in 1787, strikes at free representative institutions here and everywhere else in this world and becomes a very dangerous thing. In this legislation before us, therefore, is involved more than merely the passage of a bill to correct the chaos and confusion which confronts the people of the United States. A deep and fundamental principle of justice is also at stake.

I hope this bill, H. R. 2157, will be approved not to injure labor but to aid labor.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. CELLER. Mr. Chairman, I yield back 19 minutes time on this side. I have no further requests for time.

Mr. MICHENER. Mr. Chairman, I yield the balance of the time on this side to the gentleman from Michigan [Mr. CRAWFORD].

The CHAIRMAN. The gentleman from Michigan is recognized for 6 minutes.

Mr. CRAWFORD. Mr. Chairman, I have found the time to read this bill and to read the committee report together with the several minority views.

I propose to support the bill as is, unless it is amended. I shall be very glad to support it. If an amendment is submitted which changes the period of the statute of limitations and that holds the time element down to 18 months I think I shall be in position to support that. I would not quarrel too much on a 1-year period for suits involving this particular question.

When a firm today approaches a bank for a line of credit it is necessary for the credit manager of the bank to have in mind portal-to-portal pay suits and possibilities; and this because of the contingent liability which rests on practically all industry which comes under the Fair Labor Standards Act, and therein is where I find my hitching post with respect to the statute of limitations.

I was very much interested in what the gentleman from New York had to say on this particular phase of the bill when he had the floor, and I certainly would not be willing to extend this time to 3 years, or 5 years, or 6 years, because I believe it

would be highly destructive to all American labor and American industry generally. It seems to me that those who operate under collective-bargaining agreements have all the time they need in which to file their claims if they have from 6 to 18 months. I have never had a job with a company whether it was a proprietorship, a partnership, or a corporation where I could not bargain with the management and where I could not make up my mind and take such action as I thought was necessary within the period of 1 year. That is the reason I am as friendly to the 1-year proposition set forth in the bill as I am; but, as I say, I might in order to get something through go along with an 18-month period if that proves to be necessary, otherwise hold it to 1 year.

I will vote against anything which goes beyond 18 months if it is submitted in the form of an amendment. I believe that the Congress is in a position where it should act on this question without any further delay. I hope that the other body will take prompt action and that we can get this legislation through the White House and that the President will see fit to approve whatever bill we send down there so that we can get this benefit out to the people of this country.

When I study and try in my limited manner to understand the involvements of the international agreements to which we have become a party, when I consider our present discussions on the budget, the amount of revenue we must raise, when I receive such information as we all received with respect to Britain and the British Empire checking out of the general picture as they are, when I see the necessity of the United States stepping in as Britain steps out, it makes me more anxious to get amendments through to these various labor laws so that the Congress, insofar as it can, will remove the sanctifications and the blessings which we have placed on organized labor and which gives it monopoly powers. A labor monopoly is highly destructive as are other monopolies. I think the Congress should take fast steps to remove those blessings so we can put our house in better order to carry out the obligations which we have assumed and which we shall have to carry out rather than repudiate.

I have no sympathy, Mr. Chairman, with those who constantly approach me with the thought to the effect that the election in November canceled these international agreements. The elections did not do any such thing. Those agreements are not cancelable in that manner. I have had to tell many of my friends that irrespective of how they interpret the November 5 vote we still have these agreements before us, we have to carry them out and we cannot carry them out unless we have full employment in the United States. According to my calculations if we are to substantially meet our present obligations we must have no less than \$175,000,000,000 national income annually on today's price level, with people willing to pay a lot of taxes into the Federal Treasury and buy a lot of Government refunding issues and all on the assumption that we can now permanently arrest the growth of the na-



tional debt, and not permit it to go beyond where it stands at the present time.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. MICHENER. Mr. Chairman, I yield such time as he may desire to the gentleman from New York [Mr. LEFEVRE].

Mr. LEFEVRE. Mr. Chairman, I very much favor the passage of the Gwynne bill which we are now discussing. This avalanche of portal-to-portal suits brought on by the unions against their employers would wipe out hundreds of industries in our country. A friend of mine very actively interested in what I would consider a very sound business, with a surplus of over \$2,000,000, informs me that the union members working for them filed suits for portal-to-portal pay amounting to over \$4,000,000. This is money the employers never expected they would be called upon to pay and money the employees never expected to get. In the meantime, just imagine what such a suit, hanging over the head of the company, could do to the credit standing of the company. This bill outlaws portal-to-portal suits unless they relate to activities for which employers are required to pay by custom or contract and provides a 1-year limitation on all future suits for back wages. All back claims are barred unless brought up within 6 months of the passage of the act. It seems to me the provisions in this act are wholly justified. How could any business operate today feeling that at any time they could be sued for more than they are worth by their employees for back pay at the instigation of greedy labor leaders.

The CHAIRMAN. All time has expired. The Clerk will read the bill for amendment.

The Clerk read as follows:

*Be it enacted, etc., That (a) the Congress hereby finds that serious inequities and hardships have resulted and are resulting from the administration and enforcement of the statutes of the United States mentioned in section 5 of this act, thereby creating a serious national emergency, endangering the public welfare, and giving rise to certain evils hereinafter described; that the statutes above referred to, regulating wages, hours of work, and other conditions of employment, have been and are being administered and interpreted in disregard of long-established customs, practices, and agreements between employers and employees with the result that (1) the retrospective effect of frequent changes and innovations arising in the interpretation and application of such statutes has been and is creating great uncertainty, with new and unexpected financial liabilities upon employers and windfalls of unearned compensation to employees; (2) voluntary collective bargaining is being interfered with and industrial disputes are being created; (3) these new and wholly unexpected liabilities, immense in amount and retroactive in operation, threaten many employers with financial ruin and seriously impair the capital resources of many other employers, thereby resulting in reducing industrial operations, curtailing employment, and the earning power of employees and burdening and obstructing interstate commerce; (4) the Public Treasury will be deprived of large sums of revenue and the public finances seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (5) the cost to the Government of*

*goods and services heretofore and hereafter purchased will be unnecessarily increased, thereby causing serious interference with the development of sound fiscal policies, the stabilization of the currency, and the maintenance of the national credit; and (6) the courts of the country are being burdened with excessive and needless litigation.*

*(b) It is hereby declared to be the policy of the Congress in order to meet the existing emergency and to correct the existing evils (1) to regulate the jurisdiction of the courts; (2) to relieve and protect interstate commerce from practices which burden and obstruct it; (3) to protect the right of collective bargaining; (4) to recognize bona fide agreements, customs, and practices where not inconsistent with assuring payment of applicable statutory minimum wages or one and one-half basic hourly rate for overtime, by the provisions hereinafter set forth.*

Mr. MICHENER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. JENKINS of Ohio, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H. R. 2157) to define and limit the jurisdiction of the courts, to regulate actions arising under certain laws of the United States, and for other purposes, had come to no resolution thereon.

#### EXTENSION OF REMARKS

Mr. CASE of South Dakota asked and was given permission to extend his remarks in the RECORD and include an address delivered by the gentleman from Iowa [Mr. CUNNINGHAM] at the annual session of the American Highway Association.

Mrs. DOUGLAS asked and was given permission to revise and extend the remarks she made in Committee and include certain articles.

Mr. HOLIFIELD asked and was given permission to extend his remarks in the RECORD and include an article entitled "Teaching Is No Longer a Profession—It Is a Profession From the Class Room."

Mr. MURDOCK asked and was given permission to extend his remarks in the RECORD.

#### ELECTION CONTEST

The SPEAKER laid before the House the following communication, which was referred to the Committee on House Administration and ordered printed:

FEBRUARY 26, 1947.

The honorable the SPEAKER,

*House of Representatives.*

SIR: That there is in progress, under the provisions of the statutes, a contest growing out of the election held November 5, 1946, for the seat in the House of Representatives from the Sixth Congressional District of the State of Illinois in the Eightieth Congress is made apparent by the filing in the Clerk's office of the following communications, viz:

1. On December 23, 1946, for information only, by Hon. Harold C. Woodward, of a copy of notice of his intention to contest the election of Hon. THOMAS J. O'BRIEN as the returned Member from the Sixth Congressional District of Illinois.

2. On February 26, 1947, of a letter dated February 25, 1947, from the contestant, Hon. Harold C. Woodward, together with affidavit of personal service of notice of intention to contest and a further copy of said notice.

Since the letter of the contestant (item 2) requests the Clerk to refer this matter to the House of Representatives for appropriate action, and, further, since the question raised by the contestant in this communication will have to be decided by the House itself, the Clerk is transmitting these communications herewith for consideration by the appropriate committee.

Very truly yours,

JOHN ANDREWS,

*Clerk of the House of Representatives.*

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. DAVIS of Georgia, for 3 days, on account of attendance at funeral of a friend.

To Mr. MACKINNON, for March 3 and 4, on account of official business.

#### SPECIAL ORDER

The SPEAKER. Under previous order of the House, the gentleman from Michigan [Mr. HOFFMAN] is recognized for 20 minutes.

Mr. HOFFMAN. Mr. Speaker, instead of taking the time now, I ask unanimous consent that on Monday next, following any special orders heretofore entered, I may be permitted to address the House for 20 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

#### ADJOURNMENT

Mr. HALLECK. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 45 minutes p. m.), under its previous order, the House adjourned until tomorrow, Friday, February 28, 1947, at 11 o'clock a. m.

#### COMMITTEE HEARINGS

COMMITTEE ON EDUCATION AND LABOR

(Friday, February 28, 1947)

The Committee on Education and Labor will continue hearings on bills to amend, revise, repeal, or modify the National Labor Relations Act in the caucus room, third floor, Old House Office Building, at 10 a. m.

#### COMMITTEE ON FOREIGN AFFAIRS

The Committee on Foreign Affairs will meet at 10:30 a. m., Friday, February 28, 1947, to hear testimony of the Honorable Herbert Hoover on House Joint Resolution 134, providing for relief assistance to countries devastated by war. The meeting will be held in the Ways and Means Committee caucus room, first floor, New House Office Building.

#### COMMITTEE ON PUBLIC WORKS

The Subcommittee on Rivers and Harbors of the House Committee on Public Works will conduct a regular meeting in the committee room, 1304, New House Office Building, on Friday, February 28, 1947, at 10 a. m.

#### COMMITTEE ON VETERANS' AFFAIRS

There will be a meeting of the Committee on Veterans' Affairs at 10 a. m., Friday, February 28, 1947, in suite 356, Old House Office Building. Two veterans now attending school under the GI bill of rights will be heard upon the subject of subsistence allowances.

# COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

There will be a meeting of the Committee on Interstate and Foreign Commerce, at 10 a. m., Friday, February 28, 1947.

Business to be considered: Executive session. Conference with officials of the Federal Trade Commission pursuant to the Legislative Reorganization Act of 1946.

## COMMITTEE ON BANKING AND CURRENCY

The Committee on Banking and Currency will hold open hearing on H. R. 2233, a bill to continue the authority of the Federal Reserve banks to purchase Government securities directly from the United States. The meeting will begin at 10:30 a. m., Monday, March 3, 1947, in the Committee room 1301, New House Office Building, with Mariner S. Eccles, Chairman, Board of Governors of the Federal Reserve System as the witness.

## COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

The Subcommittee on Public Buildings and Grounds of the Committee on Public Works will meet at 10 a. m., Tuesday, March 4, 1947, to hold hearings on H. R. 2086, to authorize the furnishing of steam from the central heating plant to the property of the Daughters of the American Revolution.

The meeting will be held in room 1435, New House Office Building.

There will be a meeting of the Committee on Interstate and Foreign Commerce, at 10 a. m., March 4 and 5, 1947.

Business to be considered: Public hearing for 2 days on H. R. 505, H. R. 601, and H. R. 1111, inflammable materials.

There will be a meeting of the Committee on Interstate and Foreign Commerce, at 10 a. m., March 6 and 7, 1947.

Business to be considered: Public hearing for 2 days on H. R. 942, H. R. 1815, H. R. 1830, H. R. 1834, and H. R. 2027, National Science Foundation.

## EXECUTIVE COMMUNICATIONS, ETC.

409. Under clause 2 of rule XXIV, a letter from the adjutant general, Veterans of Foreign Wars of the United States, transmitting the proceedings of the Forty-seventh National Encampment of the Veterans of Foreign Wars of the United States, held in Boston, Mass., September 1-6, 1946 (H. Doc. No. 150), was taken from the Speaker's table, referred to the Committee on Armed Services, and ordered to be printed, with illustrations.

## REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JENNINGS: Committee on the Judiciary. H. R. 348. A bill for the relief of Dr. Alma Richards and Mrs. Mary Block; with amendment (Rept. No. 78). Referred to the Committee of the Whole House.

Mr. JENNINGS: Committee on the Judiciary. H. R. 381. A bill for the relief of Allen T. Feamster, Jr.; with amendment (Rept. No. 79). Referred to the Committee of the Whole House.

Mr. CRAVENS: Committee on the Judiciary. H. R. 566. A bill for the relief of Choctawhatchee Electric Cooperative, Inc.; with amendment (Rept. No. 80). Referred to the Committee of the Whole House.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. McDOWELL:

H. R. 2270. A bill to amend section 102 of the Revised Statutes with reference to the penalty applicable in case of contumacy of persons summoned by authority of Congress; to the Committee on the Judiciary.

By Mr. MICHENER:

H. R. 2271. A bill to incorporate into the Judicial Code the provisions of certain statutes relating to three-judge district courts, and for other purposes; to the Committee on the Judiciary.

H. R. 2272. A bill to amend section 289 of the Criminal Code; to the Committee on the Judiciary.

By Mr. POTTS:

H. R. 2273. A bill to amend the act of May 29, 1944, providing for the recognition of the services of the civilian officials and employees, citizens of the United States, engaged in and about the construction of the Panama Canal; to the Committee on Merchant Marine and Fisheries.

By Mr. SHEPPARD:

H. R. 2274. A bill to provide clerical assistance at offices of the fourth class during the period of annual or sick leave of the postmaster; to the Committee on Post Office and Civil Service.

By Mr. THOMAS of New Jersey:

H. R. 2275. A bill to combat un-American activities by providing for forfeiture of the office or position of any Government employee whose loyalty to the United States is found to be in doubt; to the Committee on Un-American Activities.

By Mr. ANDREWS of New York:

H. R. 2276. A bill to authorize the Secretary of War to pay certain expenses incident to training, attendance, and participation of personnel of the Army of the United States in the Seventh Winter Sports Olympic Games and the Fourteenth Olympic Games and for future Olympic games; to the Committee on Armed Services.

By Mr. CASE of South Dakota:

H. R. 2277. A bill granting a 15-percent increase in pensions received under special acts of Congress, not otherwise increased since March 4, 1933; to the Committee on Veterans' Affairs.

H. R. 2278. A bill to provide for the completion of Mount Rushmore National Memorial and the financing thereof by issuance of a special coin; to the Committee on Banking and Currency.

By Mr. DIRKSEN:

H. R. 2279. A bill to provide additional revenue for the District of Columbia by imposing a tax on admissions paid in the District of Columbia; to the Committee on the District of Columbia.

H. R. 2280. A bill to provide additional revenue for the District of Columbia by imposing a tax on gas and electricity used in the District of Columbia and telephone service originating in the District of Columbia; to the Committee on the District of Columbia.

H. R. 2281. A bill to provide additional revenue for the government of the District of Columbia by levying a tax on the sale of cigarettes in the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

H. R. 2282. A bill to provide revenue for the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

H. R. 2283. A bill to amend the act entitled "An act to provide for a tax on motor-vehicle

fuels sold within the District of Columbia, and for other purposes," approved April 23, 1924; to the Committee on the District of Columbia.

H. R. 2284. A bill to amend subsection (a) of section 23 and subsection (a) of section 40 of the District of Columbia Alcoholic Beverage Control Act, approved January 24, 1934, as amended; to the Committee on the District of Columbia.

H. R. 2285. A bill to amend an act entitled "An act to provide for the annual inspection of all motor vehicles in the District of Columbia," approved February 18, 1938; to the Committee on the District of Columbia.

By Mr. DOLLIVER:

H. R. 2286. A bill to amend the Nationality Act of 1940; to the Committee on the Judiciary.

By Mr. FALLON:

H. R. 2287. A bill to make certain imported merchandise subject to the same internal-revenue taxes as similar merchandise of domestic origin; to the Committee on Ways and Means.

By Mr. GILLIE:

H. R. 2288. A bill to amend the Social Security Act, and for other purposes; to the Committee on Ways and Means.

By Mr. MORRIS:

H. R. 2289. A bill to provide for disposition of the lands comprising the Fort Reno Military Reservation in Canadian County, Okla.; to the Committee on Armed Services.

By Mr. DIRKSEN:

H. R. 2290. A bill to provide additional revenue for the District of Columbia; to the Committee on the District of Columbia.

By Mr. BLOOM:

H. R. 2291. A bill to authorize the painting of the signing of the United Nations Charter for placement in the Capitol Building; to the Committee on House Administration.

By Mr. DAVIS of Tennessee:

H. R. 2292. A bill to amend the Natural Gas Act approved June 21, 1938; to the Committee on Interstate and Foreign Commerce.

By Mr. BRADLEY of Michigan:

H. R. 2293. A bill to amend the act entitled "An act to regulate navigation on the Great Lakes and their connecting and tributary waters," approved February 8, 1895; to the Committee on Merchant Marine and Fisheries.

By Mr. LANE:

H. R. 2294. A bill to establish a self-sustaining national pension system that will benefit retired citizens 60 years of age and over; to stabilize the economic structure of the Nation; and to induce a more equitable distribution of wealth through monetary circulation; to the Committee on Ways and Means.

By Mr. LYNCH:

H. R. 2295. A bill to amend the Interstate Commerce Act, as amended, so as to provide limitations on the time within which actions may be brought for the recovery of undercharges and overcharges by or against common carriers by motor vehicle and freight forwarders; to the Committee on Interstate and Foreign Commerce.

By Mr. PLUMLEY:

H. R. 2296. A bill to provide increases in the rates of pensions payable to Spanish-American War Veterans and their dependents; to the Committee on Veterans' Affairs.

By Mr. WOLVERTON:

H. R. 2297. A bill to amend the Interstate Commerce Act, as amended; to the Committee on Interstate and Foreign Commerce.

H. R. 2298. A bill to amend the Interstate Commerce Act, as amended, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H. R. 2299. A bill to amend section 25 of the Interstate Commerce Act to require certain common carriers by railroad to install and maintain communication systems and to establish and observe operating rules, regulations, and practices to promote safety of employees and travelers on railroads, and for



other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. NORMAN:

H. J. Res. 141. Joint resolution to authorize the Secretary of Agriculture to establish and operate forest-products pilot plants in the Northwestern States; to the Committee on Agriculture.

By Mr. PHILBIN:

H. Res. 121. Resolution to establish a select committee to investigate the present rapid rise in price levels and the high cost of living; to the Committee on Rules.

By Mr. LANE:

H. Res. 122. Resolution authorizing the Committee on Interstate and Foreign Commerce to investigate railroad accidents; to the Committee on Rules.

#### MEMORIALS

Under clause 3 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of Wyoming, memorializing the President and the Congress of the United States relating to public lands in, and funds and other relief due, the State of Wyoming from the United States of America; to the Committee on Public Lands. Also, memorial of the Legislature of the State of Wyoming, memorializing the President and the Congress of the United States to enact legislation relating to the Shoshone and Arapahoe Tribes of the Wind River Reservation in Wyoming; to the Committee on Public Lands.

Also, memorial of the Legislature of the Territory of Alaska, memorializing the President and the Congress of the United States to fight any increase in water-borne freight rates; to the Committee on Merchant Marine and Fisheries.

Also, memorial of the Legislature of the State of Georgia, memorializing the President and the Congress of the United States with the request that an immediate and thorough investigation be instituted into the affairs concerning veterans of World War II who are being defrauded by unscrupulous building contractors throughout the State of Georgia and the Nation as a whole; to the Committee on Veterans' Affairs.

#### PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ALBERT:

H. R. 2300. A bill for the relief of Ebbie Kirschke; to the Committee on the Judiciary.

By Mr. BLOOM:

H. R. 2301. A bill for the relief of Mimemori Aoyama; to the Committee on the Judiciary.

By Mr. BAKEWELL:

H. R. 2302. A bill for the relief of New Jersey, Indiana & Illinois Railroad; to the Committee on the Judiciary.

By Mr. GRANGER:

H. R. 2303. A bill for the relief of Mitsu M. Kobayashi, who is the wife of Edward T. Kobayashi, a citizen of the United States; to the Committee on the Judiciary.

By Mr. JOHNSON of Indiana:

H. R. 2304. A bill for the relief of Raymond Nelson Hickman; to the Committee on Armed Services.

By Mr. LYNCH:

H. R. 2305. A bill for the relief of Kazimir Roth; to the Committee on the Judiciary.

By Mr. MORTON:

H. R. 2306. A bill for the relief of Myrtle Ruth Osborne, Marion Walts, and Jessie A. Walts; to the Committee on the Judiciary.

By Mr. PRICE of Florida:

H. R. 2307. A bill for the relief of Demetrios Geranis; to the Committee on the Judiciary.

By Mr. SUNDSTROM (by request):

H. R. 2308. A bill for the relief of Raymond Rego; to the Committee on the Judiciary.

By Mr. SHAFER:

H. R. 2309. A bill authorizing the naturalization of George Zakoor; to the Committee on the Judiciary.

#### PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

145. By Mr. HART: Petition of the Department of New Jersey, Disabled American Veterans, in State executive committee meeting, protesting against the stoppage of work and the cancellation of veterans' emergency housing units; to the Committee on Banking and Currency.

146. Also, petition of executive committee of the Department of New Jersey, Disabled American Veterans, protesting to Congress that no cuts be permitted in the proposed budget reduction that will take away any benefits from the disabled veterans of the Nation; to the Committee on Appropriations.

147. Also, petition of the Department of New Jersey, Disabled American Veterans, in executive committee meeting, vigorously opposing any rent increase at this time or the removal of rent controls, as such action would definitely aggravate present housing situation; to the Committee on Banking and Currency.

148. Also, petition of the Jersey City chapter of the Polish-American Congress expressing gratification and hearty approval of the President's advising the Ambassador of the present Russian puppet regime in Poland of this Nation's disapproval of the recent elections held in Poland; to the Committee on Foreign Affairs.

149. By Mr. JONKMAN: Petition of citizens of the Fifth District of Michigan recommending that Congress correct the present sugar situation and make sugar available ration free; to the Committee on Banking and Currency.

150. By Mr. NORBLAD: Petition signed by Rev. Clark E. Enz and 17 other citizens of Polk County, Oreg., protesting against the advertisement of alcoholic beverages; to the Committee on Interstate and Foreign Commerce.

151. By Mr. ROHRBOUGH: Petition of Mr. and Mrs. G. F. Woofert and 23 other signers; to the Committee on Interstate and Foreign Commerce.

## SENATE

FRIDAY, FEBRUARY 28, 1947

(Legislative day of Wednesday, February 19, 1947)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The Chaplain, Rev. Peter Marshall, D. D., offered the following prayer:

Give to us open minds, O God, minds ready to receive and to welcome such new light of knowledge as it is Thy will to reveal. Let not the past ever be so dear to us as to set a limit to the future. Give us the courage to change our minds, when that is needed. Let us be tolerant of the thoughts of others, for we never know in what voice Thou wilt speak.

Wilt Thou keep our ears open to Thy voice, and make us a little more deaf to whispers of men who would persuade us from our duty, for we know in our hearts

that only in Thy will is our peace and the prosperity of our land. We pray in the lovely name of Jesus. Amen.

#### THE JOURNAL

On request of Mr. WHITE, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, February 26, 1947, was dispensed with, and the Journal was approved.

#### MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries.

#### CALL OF THE ROLL

Mr. WHITE. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Alken	Hawkes	Myers
Baldwin	Hayden	O'Connor
Ball	Hickenlooper	O'Daniel
Barkley	Hill	O'Mahoney
Brewster	Hoey	Overton
Bricker	Holland	Reed
Bridges	Ives	Revercomb
Brooks	Jenner	Robertson, Va.
Buck	Johnson, Colo.	Russell
Butler	Johnston, S. C.	Saltonstall
Cain	Kem	Smith
Capehart	Kilgore	Stewart
Capper	Knowland	Taft
Connally	Langer	Taylor
Cooper	Lodge	Thomas, Okla.
Cordon	Lucas	Thomas, Utah
Donnell	McCarran	Thye
Downey	McCarthy	Tobey
Dworshak	McClellan	Tydings
Eastland	McGrath	Umstead
Eaton	McKellar	Vandenberg
Ellender	Magnuson	Watkins
Ferguson	Malone	Wherry
Flanders	Martin	White
Fulbright	Maybank	Wiley
George	Millikin	Williams
Green	Moore	Wilson
Gurney	Morse	
Hatch	Murray	

Mr. WHERRY. I announce that the Senator from South Dakota [Mr. BUSHFIELD] is necessarily absent; the Senator from Wyoming [Mr. ROBERTSON] is necessarily absent on state business; the Senator from New Jersey [Mr. SMITH] is absent because of illness; and the Senator from North Dakota [Mr. YOUNG] is absent by leave of the Senate on state business.

Mr. LUCAS. I announce that the Senator from Virginia [Mr. BYRD] and the Senator from Arizona [Mr. McFARLAND], are absent on official business.

The Senator from Connecticut [Mr. McMAHON], the Senator from Florida [Mr. PEPPER], and the Senator from Alabama [Mr. SPARKMAN] are detained on public business.

The Senator from New York [Mr. WAGNER] is necessarily absent.

The PRESIDENT pro tempore. Eighty-five Senators having answered to their names, a quorum is present.

Mr. HATCH. My colleague the junior Senator from New Mexico [Mr. CHAVEZ] is unavoidably detained from the Senate and will not be able to attend the session today. I ask that he be excused, and that the announcement stand for the remainder of the week.

The PRESIDENT pro tempore. Without objection, the order is made.